(27,497)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 742.

THE STATE OF WYOMING, H. S. RIDGELY, AND THE MIDWEST REFINING COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 10, 1920.

Pleas and Proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1919, of said Court, before the Honorable William C. Hook and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Charles F. Amidon, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the thirteenth day of December, A. D. 1918, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein the United States of America, was Appellant, and H. S. Ridgely, et al., were Appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

1 Pleas in the District Court of the United States for the District of Wyoming, sitting at Cheyenne.

Be It Remembered, that heretofore, and on, to-wit, the twenty-eighth day of January, in the year of our Lord, one thousand nine hundred and eighteen (1918) came the United States of America, by Charles L. Rigdon, United States Attorney, and Charles D. Hamel, Special Assistant to the United States Attorney, its solicitors, and filed in said court its Bill of Complaint, and sued out of and under the seal of said court, a subpoena in chancery against H. S. Ridgely, Greybull Refining Company and The Midwest Refining Company.

And said Bill of Complaint is in words and figures following, to-wit:

(Bill of Complaint.)

2 United States of America, Plaintiff,
No. 963. vs.
H. S. Ridgely, Greybull Refining Company and The Midwest Refining Company, Defendants.

The United States of America, represented by its undersigned solicitors acting by and under the direction of the Attorney General, brings this its bill of complaint against H. S. Ridgely, Greybull Refining Company, a corporation, and The Midwest Refining Company, a corporation, and alleges:

I.

The defendants Greybull Refining Company and The Midwest Refining Company now are and, at all the times hereinafter mentioned as to them, were corporations organized and existing under and by virtue of the laws of the State of Maine, doing business in the State of Wyoming. The defendant H. S. Ridgely now is and, at all the times hereinafter mentioned as to him, was a citizen of the State of Wyoming.

II.

The plaintiff is and at all the times herein mentioned was the owner and entitled to the possession of certain public land situate in the State of Wyoming and described as follows, to-wit:

3 The North half of the Southeast quarter (N½ SE¼) of Section Nineteen (19), Township Forty-six (46) North, of Range Ninety-eight (98) West of the Sixth Principal Meridian, and of the oil, petroleum, gas and all other minerals contained in said land.

III.

On May 6, 1914, the President of the United States by executive order withdrew the above described together with other designated tracts of public land from all forms of location, settlement, selection, filing, entry or disposal under the mineral or nonmineral public land laws, and since the 6th day of May, 1914, none of said lands have been subject to occupation or exploration for petroleum, mineral oil or gas, or the initiation by any person or persons of any right or rights under said public land laws.

IV.

On April 4, 1912, the State of Wyoming made application for the above described land as unappropriated nonmineral public land, in lieu of, or as indemnity for,

The South half of the Southeast quarter (S½ SE¼) of Section Thirty-six (36), Township Fifty-three (53) North, of Range Eighty-seven (87) West of the Sixth Principal Meridian,

within the boundaries of the Big Horn National Forest, by filing in the United States Land Office at Lander, Wyoming, Indemnity School Land Selection List No. 180, Serial No. 05521, Lander Series, under the provisions of the Act of Congress of July 10, 1890 (26 Stats. 222), and Sections 2275 and 2276, Revised Statutes of the United States, as amended by the Act of February 28, 1891 (26 Stats. 796), embracing, besides other lands not involved in this suit, the land
4 above described. Said application for selection of said land never was allowed and, on August 17, 1916, said application for selection of said land, as aforesaid, was rejected.

V.

On or about the 24th day of May, 1916, the State of Wyoming, through its State Board of School Land Commissioners, without any lawful authority to do so, made and entered into a pretended oil and gas lease of said lands to one H. S. Ridgely, whereby the said State of Wyoming pretended to lease said land unto the said H. S. Ridgely, his successors and assigns, for the purpose of drilling, boring, operating for

and producing therefrom mineral oil and gas. Thereafter, on or about the 24th day of May, 1916, the said H. S. Ridgely assigned said pretended oil and gas lease to the defendant Greybull Refining Company. Thereafter, on or about the 30th day of June, 1917, the said Greybull Refining Company further assigned said pretended oil and gas lease to the defendant The Midwest Refining Company.

VI.

Subsequent to the 24th day of May, 1916, the defendants, and particularly the Greybull Refining Company and The Midwest Refining Company, in defiance of said order of withdrawal and in violation of the proprietary and other rights of the plaintiff and of the laws of the United States, entered upon said lands and drilled certain wells thereon to the number of fourteen (14), more or less, and the defendants Greybull Refining Company and The Midwest Refining Company have thereon certain mining property, machinery, tools and fixtures necessary to the operation of said oil wells so drilled by them, as herein before alleged.

VII.

Each of the defendants, as plaintiff is informed and believes, and, therefore, alleges, claims some right, title or interest in or to said lands described in paragraph II hereof, or in or to the petroleum or mineral oil or gas extracted therefrom or contained therein, under and by virtue of said application of the State of Wyoming filed in the United States Land Office as aforesaid, and said pretended oil and gas lease from the State of Wyoming to the defendant H. S. Ridgely, and the assignment of said pretended oil and gas lease by said defendant H. S. Ridgely to said defendant Greybull Refining Company, and the assignment of said pretended oil and gas lease by said defendant Greybull Refining Company to said defendant The Midwest Refining Company, and said instruments and the defendant's claim thereunder constitute a cloud upon the title of the United States to said public lands and to the oil and gas deposits therein.

As plaintiff is informed and believes, and therefore alleges, the defendant Greybull Refining Company is owned and controlled by and is a mere subsidiary of the defendant The Midwest Refining Company.

Except as herein stated, the plaintiff has no knowledge of any claims that may be made by the defendants, or either of them, in or to the premises described in paragraph II of

this bill or any part thereof, and calls upon them to assert such claims, if any they have.

Since some time prior to the 20th day of August, 1916, the defendants have been engaged in sinking wells upon said public lands described in paragraph II hereof, and in extracting oil and gas therefrom, all of which oil and gas the defendants have appropriated to their own use and benefit to the great damage of the plaintiff. The plaintiff is unable to state the amount, quantity or value of the oil and gas so extracted and appropriated except, on information and belief, that the same exceeds one hundred thousand (100,000) barrels, of a very high commercial grade and of varying values at the time of production, and aggregating in value many thousands of dollars; and such items of damage can only be ascertained by requiring the defendants to render an accounting therefor.

The defendants are now and intend to continue extracting and appropriating oil and gas from the wells now existing on said public lands described in paragraph II hereof and to sink new wells thereon, and will continue such extraction and appropriation of the supply of oil and gas underlying said lands to the entire exhaustion thereof unless restrained by order of this honorable Court, and the occupation or operation of said lands and the extraction of the oil and gas content thereof by the defendants has been, is and will continue to be detrimental to and destructive of the purposes and policy of the plaintiff with reference to said lands, and an irreparable injury to said lands and to the plaintiff and the people of the United States, which can not be compensated in damages. The greater part of said wells can be successfully shut down and capped so as to conserve said oil content in the ground, but some of them are of such character and so located that continued operations to a limited extent will be necessary to prevent infiltration of water into the oil sands and off-set producing wells on adjoining privately owned lands, and for such operations both conservative and productive the appointment of a receiver to take charge of said property pending the determination of this suit is necessary.

VIII.

That because of the premises of this bill neither of the defendants has or ever has had any right, title or interest in or to, or lien upon, said lands, or any part thereof, or in or to the petroleum or mineral oil or gas therein, or any right to extract petroleum or mineral oil or gas therefrom, or to

convert or dispose of the petroleum or gas so extracted, or any part thereof; that on the contrary the action of the defendants and each of them in entering upon said lands, drilling wells thereon and extracting petroleum or mineral
7 oil and gas therefrom, and using and appropriating the petroleum or mineral oil or gas so extracted therefrom, was and is in violation of the laws of the United States and said order of withdrawal and reservation of said lands, and that all of such acts were and are in violation of the rights of the plaintiff and interfere with and obstruct the execution by the plaintiff of its public policy with respect to said lands.

IX.

The present value of the lands hereinbefore described exceeds one hundred and fifty thousand dollars ($150,000.00).

In consideration of the premises thus exhibited, and inasmuch as plaintiff herein is without full and adequate remedy in the premises save in a court of equity where matters of this nature are properly cognizable and relievable, plaintiff prays:

(1) That a subpoena be issued to each of the defendants requiring each of said defendants to answer this bill within a time to be therein specified.

(2) That the plaintiff be decreed to be the absolute owner of the public lands described in paragraph II hereof and of the product thereof and proceeds therefrom, and that the defendants and each of them be decreed to have no right, title or interest in or to the same or any part thereof.

(3) That the lease and assignments of lease shown in paragraph V hereof be decreed to be null and void and cancelled.

(4) That the defendants and each of them be required to render a full and true account of all of their operations on and with reference to said lands, of all the oil and gas extracted therefrom, the dates of such extraction, the amount, quantity and value thereof, the amounts used and sold and the amounts on hand, and that the plaintiff have and recover from the defendants such amounts as may thereupon be found to be due the plaintiff in kind and in money as the case may be, together with such damages as the plaintiff may be found to have sustained.

(5) That pending the determination of this suit the defendants and their officers, agents and servants be en-
8 joined from further trespassing on any of said lands or from sinking any additional wells thereon or from

extracting oil or gas therefrom, and that upon a final hearing such injunction be made perpetual.

(6) That a receiver be appointed to take charge of all of said lands and the product thereof and proceeds therefrom, with authority to conserve and operate the same under the supervision of the Court pending the final determination of this suit.

(7) That the plaintiff have all such other and further relief as it may be entitled to in equity and good conscience.

CHARLES L. RIGDON,
United States Attorney.
CHARLES D. HAMEL,
Special Assistant to the United States Attorney.
Solicitors for plaintiff.

Henry F. May,
Special Assistant to the
Attorney General,
Of Counsel.

United States of America,
District of Wyoming,
State of Wyoming—ss.

Adelbert Baker, being first duly sworn, deposes and says:

He is now and has been at all the times mentioned in the foregoing bill of complaint Chief of Field Division of the General Land Office at Cheyenne, Wyoming, in charge of field work in Wyoming, and much of said work has been
9 done in investigating facts relating to the lands withdrawn by the President as oil lands on various dates, among them the lands withdrawn by order of May 6, 1914.

That from examination of such lands, or the facts in relation thereto, obtained by him or by special agents or mineral inspectors acting under his direction as such Chief of Field Division, and from examination of the records of the General Land Office and of the local land offices of plaintiff in said State of Wyoming, he is informed as to the matters and things as stated in the complaint with reference to the particular lands therein described; and the matters therein stated are true, except as to those matters therein stated as upon information and belief, and as to those matters he believes them to be true.

ADELBERT BAKER.

Subscribed and sworn to before me, this 28 day of January, 1918.

(Seal) CHARLES J. OHNHAUS,
Clerk of U. S. District Court,
District of Wyoming.

Endorsed: Filed in the District Court on January 28, 1918.

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10 (Summons and Marshal's Return.)

United States of America,
District of Wyoming—ss.

In the District Court of the United States for the District of Wyoming Sitting at Cheyenne.

The President of the United States of America, to H. S. Ridgely, Greybull Refining Company, and The Midwest Refining Company—Greeting:

You and each of you are hereby commanded, that you appear before the Judge of the District Court of the United States, for the District of Wyoming, at the city of Cheyenne, in said District, twenty days from the date hereof, to answer the Bill of Complaint of United States of America, this day filed in the office of the Clerk of said Court, in said city of Cheyenne, then and there to receive and abide by such judgment and decree as shall then or thereafter be had upon said Bill of Complaint, upon pain of judgment being pronounced against you by default, and a decree had and entered accordingly.

To the Marshal of the District of Wyoming to execute and make due return.

Witness, the Honorable John A. Riner, Judge of the District Court of the United States, for the District of Wyoming, and the seal of the said District Court, at the city of Cheyenne aforesaid, this 28th day of January, in the year of our Lord one thousand nine hundred and eighteen and of the independence of the United States, the 142nd year.

(Seal.) CHARLES J. OHNHAUS,
Clerk,
By Florence Bradley, Deputy Clerk.

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11 Memorandum.

The above named defendants are hereby notified that unless they and each of them shall file their answer or other defense in the office of the Clerk of said Court, at the city of Cheyenne aforesaid, on or before the twentieth day after service, excluding the day thereof, the Bill of Complaint may be taken pro confesso.

CHARLES J. OHNHAUS, Clerk,
By Florence Bradley, Deputy Clerk.

Return on Service of Writ.

United States of America,
District of Wyoming—ss.

I hereby certify and return that I served the annexed subpoena on the therein-named Midwest Refining Co. Mr. J. B. Barnes, Jr., agent in charge, not being in this district, I obtained service by handing to and leaving a true and correct copy thereof with Mr. N. S. Wilson of the Board of Directors of aforesaid company personally at Casper, Wyo. in said District on the 15th day of February, A. D. 1918.

DANIEL F. HUDSON,
U. S. Marshal,
By Geo. F. English, Deputy.

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12 Marshal's Return.

United States of America,
District of Wyoming—ss.

Cheyenne, February 11th, 1918.

I have duly executed the within writ, by delivering to H. S. Ridgely, January 29th, at Cheyenne, Wyoming, and each of them personally, a true copy of the within writ, at the place and time as follows, to-wit: As to the Greybull Refining Company, upon investigation I found The Greybull Refining Company had on Oct. 23rd, 1917, filed Notice of dissolution of the corporation in the Secretary of State's Office at Cheyenne, Wyoming, therefore could find no officer of the Company to make service on.

This writ therefore returned to Clerk Dist. Court, as the law directs, this 20th day of February, A. D. 1918.

DANIEL F. HUDSON,
Marshal,
By Peter R. Warlaumont,
Deputy Marshal.

Marshal's Fees.

Service, 2 persons, at $2.00 each	$4.00
Mileage, 221 miles at 6c. Going only	$13.26
Expenses	$33.87
Total	$51.13

Paid by Daniel F. Hudson, U. S. Marshal.

Endorsed: Filed in the District Court on February 20, 1918.

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13 (Appearance of Counsel for Defendant H. S. Ridgely.)

The Clerk of said Court will enter our appearance as solicitors and of counsel for the defendant, H. S. Ridgely.

HERBERT V. LACEY,
JOHN W. LACEY,
Solicitors and of Counsel for Defendant, H. S. Ridgely.

Endorsed: Filed in the District Court on February 20, 1918.

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14 (Appearance of Counsel for Defendant, Midwest Refining Company.)

The Clerk of said Court will enter our appearance as solicitors and of counsel for the defendant The Midwest Refining Company.

HERBERT V. LACEY,
JOHN W. LACEY,
Solicitors and of Counsel for Defendant, The Midwest Refining Company.

Endorsed: Filed in the District Court on February 20, 1918.

(Joint Answer of Defendants, H. S. Ridgely and The Midwest Refining Company.)

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint cotained, for answer thereunto, or to so much and such parts thereof as these defendants are advised it is material for them to make answer unto, answering say:

They admit that the Midwest Refining Company now is and at all the times mentioned in said bill of complaint as to it, was a corporation organized and existing under and by virtue of the laws of the State of Maine, doing business in the State of Wyoming, and that the defendant, H. S. Ridgely, now is and at all the times in said bill mentioned as to him was a citizen of the State of Wyoming.

And these defendants, and each of them, deny that the plaintiff is the owner or entitled to the possession of the North-half of the Southeast Quarter of Section nineteen (19), Township forty-six (46) North, Range ninety-eight (98) West of the Sixth Principal Meridian, or any portion thereof, or of the oil, petroleum, gas or other minerals contained in said land, or any of them. Defendants, and each of them, admit and aver, however, that until and at the time of the selection of the lands last aforesaid by the State of Wyoming as hereinafter set forth, the said lands last above described were surveyed, unappropriated, public lands of the plaintiff, situated within the State of Wyoming, and that the same had not nor had any thereof been classified, reported, returned or otherwise known to be mineral in character prior to or at the time of said selection.

And these defendants admit that on May 6th, 1914, an executive order was issued by the President of the United States attempting to withdraw the lands above described, together with other designated tracts, from all forms of location, settlement, selection, filing, entry or disposal under the mineral or non-mineral public land laws of the United States, but defendants, and each of them, deny that the said order was in any wise effective as to the lands last above described for the reason that the same had theretofore been selected by the State of Wyoming as more particularly hereinafter set forth.

And these defendants, and each of them, admit and allege that at the time of the admission of the State of Wyoming into the Union, to-wit, July 10, 1890, the South-half of the

Southeast Quarter of Section thirty-six (36), Township fifty-three (53) North of Range eighty-seven (87) West of the Sixth Principal Meridian, was surveyed, unappropriated, unoccupied, vacant, non-mineral public lands of the United States within the State of Wyoming, and that under and by virtue of Section four of the Act of the Congress of the United States of America approved July 10, 1890, being an act entitled "An Act to Provide for the Admission of the State of Wyoming into the Union and for other purposes," the said lands in said Section 36 were at the date last aforesaid
17 granted to and vested in the State of Wyoming for the support of common schools.

And the defendants, and each of them, deny that the said lands in Section 36, or any of them, had been sold or otherwise disposed of by or under the authority of any act of Congress, and deny that the selection of the North-half of the Southeast Quarter of Section 19, Township 46 North of Range 98 West of the Sixth Principal Meridian, or any of it, was in any wise made under any provision of the said Act of Congress of July 10, 1890.

And these defendants and each of them, admit that heretofore, to-wit, on the 2nd day of February, A. D. 1897, the said lands in Section 36, Township 53 North, Range 87 West of the Sixth Principal Meridian, were by the President of the United States included within the boundaries of the Big Horn National Forest Reserve, but these defendants, and each of them, allege that the said proclamation of the President so including the lands last above described in said Big Horn National Forest Reserve did not in any wise operate to vest the title to said lands in Section 36 in the United States of America, nor in any way divest the title of the State of Wyoming to the said lands, or any part thereof; and these defendants allege that the said proclamation of the President and the constitution of the said Big Horn National Forest Reserve and the inclusion of the said lands in Section 36 within the same took place long after the title to the said lands in said Section 36 had vested absolutely in the State of Wyoming for the support of common schools.

And these defendants admit and allege that after the said lands in said Section 36 were so as aforesaid included within the Big Horn National Forest Reserve, to-wit, on April 4, 1912, the State of Wyoming selected the North-half of the Southeast Quarter of Section 19, Township 46 North of Range 98 West of the Sixth Principal Meridian, which were then unappropriated, surveyed, public lands of the United States of

America, situate within the State of Wyoming, no part
18 of which had been classified, reported, returned or otherwise known to be mineral in character prior to or at the time of said selection, in lieu of the South-half of the Southeast Quarter of Section 36, Township 53 North of Range 87 West of the Sixth Principal Meridian, which had theretofore been included within the said Big Horn National Forest Reserve as aforesaid, and in and by its said selection of said lieu lands waived in favor of the plaintiff its right to the said lands in said Section 36, in exchange with the United States of America for said lands in said Section 19, Township 46 North of Range 98 West of the Sixth Principal Meridian, all of which was done under and pursuant to the provisions of Sections 2275 and 2276 of the Revised Statutes of the United States as amended by the Act of February 28, 1891.

And defendants, and each of them, deny that the said selection of said lands in Section 19, or the waiver of the right of the State of Wyoming to said lands in said Section 36, or either of them, were in any wise under or by virtue of any provisions in said Sections 2275 and 2276 of the Revised Statutes of the United States, or either of said Sections, or any other law of the United States in relation to lands settled upon with a view to preemption or homestead before the survey thereof in the field, or in any wise under any provision of the said Sections of the Revised Statutes of the United States, or either of them, or any other law of the United States granting the right to select indemnity lands where Sections 16 or 36 are found to be mineral lands, or in any wise under any provision in the said Sections, or either of them, or any other law of the United States in relation to compensation of deficiencies for school purposes where Sections 16 or 36 are fractional in quantity or where one or both are wanting by reason of the township being fractional, or for any natural cause whatever. But defendants aver that on the contrary said selection of said lands in said Section 19 and said waiver by the State of Wy-
19 oming of its rights in said Section 36, and each of them, were and are under those provisions of said Sections 2275 and 2276 of the Revised Statutes of the United States, as amended, which authorize the waiver by any State of its vested rights in lands in Section 36 when said Section 36 has fully passed to the State and is thereafter included within a forest reservation, and those provisions of said sections of the statutes which grant other lands of equal acreage in lieu of the said lands in Section 36, the same to be selected from any unappropriated, surveyed, public lands, not miner-

al in character, within the State. And these defendants aver that the said selection of the said lands in Section 19 and the waiver of the rights of the State of Wyoming to the said lands in Section 36 were each and all done and performed in full and strict compliance with law and with the customs and regulations of the Interior Department of the United States governing the matter of selection and waiver in such cases. And these defendants attach hereto a copy of the selection of said lands by the State of Wyoming, marked "Exhibit A", and of the endorsement upon the said selection by the Register and Receiver of the Local Land Office of the District wherein the said lands lie, marked "Exhibit B", and of the non-mineral and non-occupancy affidavit as to the lands in Section 19, marked "Exhibit C", and of the receipt of the Local Land Office for the amount required to be paid by the State of Wyoming upon the said selection, marked "Exhibit D", and of the Non-encumbrance Certificate of the lands in Section 36 filed in connection with the said selection by the States of Wyoming, marked "Exhibit E". And these defendants, and each of them, hereby for greater certainty refer to the said exhibits and make them, and each of them, part of this their answer.

And these defendants, and each of them, further aver that upon the said selection, notice thereof was published and also posted in the office of the Register of said Local Land Office all as required by law and by the regulations of the Interior Department of the United States, that no protest or objection to said selection was filed or made, and that the said Local Land Office where the said selection was filed in all things approved and allowed the said selection, and on the 30th day of April, A. D. 1912, duly reported the same to the Commissioner of the General Land Office, copy of which report is hereto attached, marked "Exhibit F", which is hereby referred to and made part hereof for greater certainty, and defendants aver that said Commissioner of the General Land Office took no action thereon until the 17th day of August, 1916. And these defendants admit that the Secretary of the Interior has failed and refused to approve the said selection so made by the State of Wyoming. And defendants aver that the Interior Department of the United States has entered a final decision so refusing to approve said selection, that said decision was made by the Assistant Secretary of the Interior acting as Secretary on appeal from the Commissioner of the General Land Office to the Secretary of the Interior. But these defendants, and each of them, aver that the said failure to approve and the said refusal to approve were not, nor were

either of them, upon any matter relating to the sufficiency or to the due regularity of the State's application or selection, or to the known character of the said land as mineral or non-mineral at the date of filing said selection, or as to the good faith of the State of Wyoming, or as to its ignorance at the time of its selection of any of the oil deposits since developed on said land. But on the contrary thereof these defendants, and each of them, aver that in and by its said decision, failing and refusing to approve the said selection the Interior Department of the United States distinctly and in terms refused to make any finding whatever in relation to the sufficiency and due regularity of the State's application and selection,
21 and failed and refused to make any finding as to the known character as mineral or non-mineral of the said lands in Section 19 at the date of the filing of said selection, and failed and refused to make any finding as to the good faith of the State of Wyoming in making the said selection, or as to the ignorance of said State at the time of said selection in relation to any oil deposits since developed. And these defendants, and each of them, aver that the sole ground of the failure and refusal of the officers of the Interior Department, having charge of the matter to approve said selection by the State of Wyoming, was and is the claim and pretense that oil has been discovered in said selected lands at a time long since said selection was so as aforesaid made and filed. A copy of the said final decision of the Assistant Secretary of the Interior is hereto attached, marked "Exhibit G", and hereby referred to for greater certainty.

And these defendants, and each of them, aver that the said State of Wyoming in making the said selection acted in entire good faith and fully complied with all and singular the terms and conditions of the statutes in such cases made and provided necessary to entitle said State to become vested with full title to the said selected lands in said Section 19, and thereby acquired a vested interest in the said lands and became the equitable owner thereof. That the said lands at the time of said selection were not by any one known to be mineral in character, and that any change in that condition occurring subsequently to the selection of said lands by the State of Wyoming as aforesaid cannot affect the rights of the State of Wyoming under its said selection.

These defendants admit that heretofore on or about the 24th day of May, 1916, the State of Wyoming, through its State Board of School Land Commissioners, made and entered into an oil and gas lease of said lands to this defendant H. S. Ridgely, whereby the State of Wyoming leased said land

to the said Ridgely, his successors and assigns, for the
22 purpose of drilling, boring, operating for and production therefrom mineral oil and gas; but defendants deny that the said lease was without lawful authority. And these defendants further admit that on or about the 24th day of May, 1916, the said H. S. Ridgely assigned said oil and gas lease to the Greybull Refining Company mentioned in said Bill of Complaint, and that thereafter about the 30th day of June, 1917, the said Greybull Refining Company further assigned said oil and gas lease to this defendant, The Midwest Refining Company.

And defendants further admit that subsequent to the 24th day of May, 1916, this defendant, The Midwest Refining Company, entered upon said lands and drilled certain wells thereon, and that the defendant Midwest Refining Company has on said lands certain mining property, machinery, tools and fixtures necessary to the operation of said oil wells so drilled by them. And defendants deny that the said acts of the said Midwest Refining Company are or ever were in defiance of the order of withdrawal mentioned in said Bill of Complaint or in violation of the proprietary or any other rights of the plaintiff or of the laws of the United States.

And defendants, and each of them, admit and aver that they claim, and have rights, titles and interests in and to said lands in said Section 19, and in and to the petroleum and mineral oil and gas extracted therefrom or contained therein under and by virtue of the said selection by the State of Wyoming filed in the United States Land Office as aforesaid, and under and by virtue of said oil and gas lease from the State of Wyoming to the defendant H. S. Ridgely and the assignment of said lease through mesne assignments to the defendant Midwest Refining Company. And defendants further admit and aver that the State of Wyoming has primary interests in the said lands and the oil and other mineral obtained therefrom and contained therein as owner thereof. And these
defendants admit that the defendant Midwest Refining
23 Company is engaged in extracting oil from the said lands in said Section 19, and have extracted therefrom more than one hundred thousand barrels of a high commercial grade of oil, aggregating in value many thousands of dollars, which said oil and the proceeds thereof these defendants aver belongs to these defendants and to the said State of Wyoming under and pursuant to the terms of the said oil lease so as aforesaid executed by the State of Wyoming.

And these defendants admit that it is their intention and the intention of the State of Wyoming to continue to extract the said oil and to sink new wells upon the said lands in said Section 19 so long as the supply of oil underlying said lands shall be sufficient to warrant such extraction.

And defendants deny that they, or either of them, ever have appropriated or are now appropriating, or intend prior to the settlement of the controversy between the parties hereto, to appropriate any of the oil or gas from any well now existing on said lands or any new well to be sunk thereon; but on the contrary these defendants aver that by an agreement between the parties to this suit and the State of Wyoming, all being represented, for the purpose of fully protecting the rights of all parties it was stipulated that the gross proceeds from the sale and disposition of the oil produced from the said lands less a deduction of ten cents per barrel for operating expenses, should be placed in the Stock Growers National Bank of Cheyenne, to await the outcome of the determination of the title to the land, the money thus accruing to follow the title to the land. And these defendants further aver that under and pursuant to said agreement which was made and entered into as soon as oil was discovered on the said land, the gross proceeds of all the oil produced on said land, less ten cents per barrel as above agreed, have been so deposited with the said The Stock Growers National Bank of Cheyenne, and there remain to await the final settlement of the title to said lands, the said gross proceeds less the deduction aforesaid to become the property of such one
24 or more of the parties as should finally be declared the owner, or owners, of the title to the said lands. And these defendants further aver that pursuant to a further agreement between the parties the said proceeds have been, and as received are being invested in those certain bonds of the United States of America known as "Liberty Bonds", and that by the means aforesaid, through the agreement of the parties as aforesaid, all and singular the gross proceeds of all the oil obtained from the said lands are continually and safely preserved and protected for the use of such of the parties to this suit as may be found entitled thereto. And these defendants further aver that ten cents per barrel, the amount deducted for operating expenses, is less than the actual cost of such production and far less than it would cost the plaintiff herein to produce the said oil in case the plaintiff were found entitled and should proceed in any manner possible to it to cause the oil from said lands to be produced, and far less than it would cost if said oil were produced by a receiver.

And these defendants further deny that any gas has been or is being produced from the said lands. And defendants further aver that the lands on all sides of the lands here in controversy are producing oil lands; that along the north boundary of the lands in controversy six wells are producing on lands immediately adjoining the lands in controversy; that along the south boundary on lands immediately adjoining, six wells are now producing oil; that along the east boundary on adjoining lands, one well is producing oil; that along the west boundary on adjoining lands, one well is producing oil; that each of the said wells on adjoining lands is so close to the boundary of the lands in controversy that the production of oil from the adjoining lands will necessarily drain oil from the lands in controversy, and said adjoining wells make it necessary that wells generally termed "off-setting wells" should operate near the boundary on the lands in controversy opposite each of the said wells on adjoining lands; that otherwise the value of the lands in controversy would be largely destroyed within a short time by the drainage of the oil therefrom through the said wells on adjoining lands. And defendants aver that the total number of wells on the said lands in controversy in operation by the defendant, Midwest Oil Company, is sixteen wells, of which six are off-set wells to an equal number of wells on lands adjoining along the north boundary of the lands in controversy, six are off-set wells to wells on adjoining lands along the south boundary, one is an off-set well to a well on adjoining lands on the east boundary, one is an off-set well to a well on adjoining lands along the west boundary, and one well besides is in operation in the center of each forty acre tract. And defendants now offer to continue the said method of protecting the said funds, and aver that the said method will preserve to the party or parties entitled a larger share of the said funds than would be possible under any receivership or other plan of operation of which they have knowledge, and that it is necessary to continue the operation of the said wells on the lands in controversy, as otherwise the oil in the lands in controversy would be largely lost to the person or persons entitled thereto through the drainage that would be accomplished by wells on adjoining lands as aforesaid.

And these defendants aver that under the facts aforesaid they as lessees of the State of Wyoming have rights in and to the said petroleum or mineral oil, and a right to extract the same, subject to the rights of the State of Wyoming as provided in the said lease to the said defendant, H. S. Ridge-

ly, and that the acts of the defendants in the premises are now, nor are any of said acts, in violation of any right of the plaintiff, nor do they or any of them interfere with or obstruct the execution by the plaintiff of its public policy with reference to said lands, without this that any other matter or thing material or necessary for these defendants to
26 make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed and for all other proper relief.

HERBERT V. LACEY,
JOHN W. LACEY,
Solicitors and of Counsel for the Defendant H. S. Ridgely and The Midwest Refining Company.

State of Wyoming,
County of Laramie—ss.

H. S. Ridgely being first duly sworn, on his oath according to law, deposes and says: that he is one of the defendants named as such in the Bill of Complaint in the above entitled cause and one of the answering defendants who make the above joint and several answer; that he has read said answer and that the facts therein set forth are true.

H. S. RIDGELY,

Subscribed in my presence and sworn to before me this 25th day of March, A. D. 1918.

JENNIE M. TUPPER,
(Seal). Notary Public.

27 Endorsed: Filed in the District Court on March 29, 1918.

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28 (Petition of the State of Wyoming for leave to Intervene as a Defendant.)

Comes now the State of Wyoming, appearing by D. A. Preston, its Attorney General, who is hereunto specifically authorized and directed by the Governor of the State of Wyoming, copy of which authority is hereto attached, and moves the Court for leave to intervene and submit itself to the jurisdiction of said Court as a defendant in said cause.

And for grounds of this petition the State of Wyoming shows to this Honorable Court that the State of Wyoming is the owner of the lands in controversy in said cause, and that the defendants named as such in said cause have no other right or title than as lessees from the State of Wyoming, and your petitioner shows to the Court that the proper and full protection of its rights and interests in said lands requires that it be permitted to intervene and set forth its title to and rights in the said lands in controversy.

29 And your petitioner presents herewith the answer to the bill of complaint which it desires to file as intervenor in said cause.

DOUGLAS A. PRESTON
Attorney General of the State of Wyoming and Attorney and of Counsel of the State of Wyoming.

Herbert V. Lacey,
John W. Lacey,
Of Counsel.

The State of Wyoming,
County of Laramie—ss.

D. A. Preston being duly sworn on his oath according to law, deposes and says, that he is Attorney General of the State of Wyoming and appears in said cause as petitioner for the right to intervene on behalf of said State, and is hereunto duly authorized by the Governor of the State of Wyoming. And affiant further says that he has read the foregoing petition for intervention and verily believes that the facts therein set forth are true.

DOUGLAS A. PRESTON.

Subscribed in my presence and sworn to before me this 27th day of March, A. D. 1918.

JENNIE M. TUPPER,
(Seal) Notary Public

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30 (Authority of the Attorney General of the State of Wyoming, to Intervene as a Defendant.)

To the Honorable D. A. Preston, Attorney General of the State of Wyoming.

It has come to my knowledge that suit has been brought by the United States against H. S. Ridgely, The Midwest Refining Company, et al, and that the object of the suit is to

declare that the ownership and right of possession on the North-half of the Southeast Quarter of Section 19, Township 46 North of Range 98 West of the Sixth Principal Meridian, situated in the State of Wyoming, is in the United States of America, and to enforce a claim made by the United States of America for all the oil and other mineral that may be found in said lands, and to the proceeds of any and all mineral that may have been taken therefrom. I am informed that the State of Wyoming has the equitable ownership in and title to said lands by reason of the due selection thereof, accompanied by the surrender to the United States of certain lands owned by the State of Wyoming within a forest reservation, title to which had vested in the said State of Wyoming prior to the time when the same was included within said forest reservation by the United States.

31 In order that the rights of the State of Wyoming may be fully protected, I hereby authorize, empower and direct you to intervene in said suit on behalf of the State of Wyoming, waiving all questions of the jurisdiction of said court over the State of Wyoming in relation to the said matters, and set forth, assert and maintain the rights of the State of Wyoming as may be just and proper.

Done at the Capitol of Wyoming this 13th day of March, in the year of our Lord one thousand nine hundred and eighteen.

FRANK L. HOUX,
Acting Governor of Wyoming.

By the Governor.

Frank L. Houx,
Secretary of State of the State of Wyoming.

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32 (Separate Answer of the State of Wyoming.)

Comes now the State of Wyoming, being authorized to intervene as a defendant in said cause by the order of said Court, and now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's Bill of Complaint contained, for answer thereunto or to so much and such parts thereof as the said State of Wyoming is advised it is material for it to make answer unto, answering says:

It admits that the Midwest Refining Company now is and at all the times mentioned in said Bill of Complaint as to it was a corporation organized and existing under and by virtue

of the laws of the State of Maine, doing business in the State of Wyoming, and that the defendant H. S. Ridgely now is and at all the times in said Bill mentioned as to him was a citizen of the State of Wyoming.

And this intervening defendant denies that the plaintiff is the owner or entitled to the possession of the North-
33 half of the Southeast Quarter of Section 19, Township 46 North, Range 98 West of the Sixth Principal Meridian, or any portion thereof, or of the oil, petroleum, gas or other minerals contained in said lands, or any of them, or any part thereof. And defendant admits and avers that until and at the time of the selection of the lands last aforesaid by this defendant, as hereinafter set forth, the said lands last above described were surveyed, unappropriated, public lands of the plaintiff, situate within the State of Wyoming, and that the same had not, nor had any thereof been classified, reported, returned, or otherwise known to be mineral in character prior to or at the time of said selection.

And this defendant admits that on May 6, 1914, an executive order was issued by the President of the United States attempting to withdraw the lands above described, together with other designated tracts, from all forms of location, settlement, selection, filing, entry or disposal under the mineral or non-mineral public land laws of the United States, but this defendant denies that the said order was in any wise effective as to the lands last above described for the reason that the same had theretofore been selected by this defendant as is more particularly hereinafter set forth.

And this defendant admits and alleges that this defendant was admitted into the Union as one of the States constituting the United States of America, heretofore, to-wit, on the 10th day of July,1890, and that at the time of said admission the South-half of the Southeast Quarter of Section 36, Township 53 North of Range 87 West of the Sixth Principal Meridian was surveyed, unappropriated, unoccupied, vacant, non-mineral public lands of the United States within the State of Wyoming, and that under and by virtue of Section 4 of the Act admitting this defendant into the Union, to-wit, the Act of Con-
gress of the United States of Amercia, approved July
34 10, 1890, being an act entitled "An Act to provide for the admission of the State of Wyoming into the Union and for other purposes." the said lands in said Section 36 were at the date last aforesaid granted to and vested in this defendand for support of common schools.

And this defendant denies that the said lands in Section 36, or any of them, had been sold or otherwise disposed of by or under the authority of any act of Congress, and denies that the selection of the North-half of the Southeast Quarter of Section 19, Township 46 North of Range 98 West of the Sixth Principal Meridian, or any of it, was in any wise made under any provision of the said Act of Congress of July 10, 1890.

And this defendant admits and alleges that heretofore, to-wit, on the 22nd day of February, A. D. 1897, the said lands in Section 36, Township 53 North 87 West of the Sixth Principal Meridian, were by the President of the United States by official proclamation included within the boundaries of the Big Horn National Forest Reserve, but this defendant alleges that the said proclamation of the President so including the lands last above described within said Big Horn National Forest Reserve did not in any wise operate to vest the title to said lands in Section 36 in the United States of America, nor in any way divest the title of this defendant to the said lands, or any part thereof. And this defendant alleges that the said proclamation of the President and the constitution of the said Big Horn National Forest Reserve and the inclusion of the said lands in Section 36 within the same, took place long after the title to the said lands in Section 36 had vested absolutely in this defendant for the support of common schools.

And defendant admits and alleges that after the said lands in said Section 36 were so as aforesaid included within the Big Horn National Forest Reserve, to-wit, on April 4, 1912, this defendant selected the North-half of the Southeast Quarter of Section 19, Township 46 North of Range 98 West
35 of the Sixth Principal Meridian, which were then unappropriated, surveyed public lands of the United States of America, situate within the State of Wyoming, no part of which had been classified, reported, returned, or otherwise known to be mineral in character prior to or at the time of said selection, in lieu of the said South-half of the Southeast Quarter of Section 36, Township 53 North of Range 87 West of the Sixth Principal Meridian, which had theretofore been included within the Big Horn National Forest Reserve as aforesaid, and in and by its said selection of said lands waived in favor of the plaintiff its right to the said lands in said Section 36, in exchange with the United States of America for said lands in said Section 19, all of which was done under and pursuant to certain provisions contained

in Section 2275 and 2276 of the Revised Statutes of the United States as amended by the Act of February 28, 1891.

And this defendant denies that the selection of said lands in Section 19, or the waiver of the right of this defendant to said lands in Section 36, or either of them, were in any wise under or by virtue of any provisions in said Sections 2275 and 2276 of the Revised Statutes of the United States as amended as aforesaid, or either of said Sections, or of any other law of the United States in relation to lands settled upon with the view to preemption or homestead before the survey thereof in the field, or in any wise under any provisions of the said Sections of the Revised Statutes, or either of them, as amended, or otherwise, or any other law of the United States granting the right to select indemnity lands where said Sections 16 or 36 are found to be mineral lands, or in any wise under any provision in the said Sections, or either of them, as amended, or otherwise, or any other law of the United States in relation to compensation of deficiencies for school purposes where Sections 16 or 36 are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or for any natural cause whatever.

36 But this defendant avers that on the contrary said selection of said lands in said Section 19 and said waiver by this defendant of its rights in said Section 36, and each of them, were and are under those provisions of said Sections 2275 and 2276 of the Revised Statutes of the United States, as amended, which authorize the waiver by any State of its vested rights in lands in Section 36 when said Section 36 has fully passed to the State and is thereafter included within a forest reservation, and those provisions of said sections of the statutes which grant other lands of equal acreage in lieu of the said lands in Section 36, the same to be selected from any unappropriated, surveyed, public lands, not mineral in character, within the State. And this defendant avers that the said selection of the said lands in Section 19, and the waiver of the rights of the State of Wyoming to the said lands in Section 36 were each and all done and performed in full and strict compliance with law and with the customs and regulations of the Interior Department of the United States governing the matter of selection and waiver in such cases. And this defendant attaches hereto a copy of the selection of said lands by this defendant, marked "Exhibit A", and of the endorsement upon the said selection by the Register and Receiver of the Local Land Office of the District wherein the said lands lie, marked "Exhibit B", and of the non-mineral and non-occupancy affidavit as to the

lands in Section 19, marked "Exhibit C," and of the receipt of the local Land Office for the amount required to be paid by the State of Wyoming upon the said selection, marked "Exhibit D", and of the Non-encumbrance Certificate of the lands in Section 36 filed in connection with the said selection by the State of Wyoming, marked "Exhibit E", and this defendant hereby for greater certainty refers to the said exhibits and makes them, and each of them, part of this its answer.

And this defendant further avers that upon its said selection, notice thereof was published and also posted in the office
37 of the Register of said Local Land Office, all as required by law and by the regulations of the Interior Department of the United States, that no protect or objection to said selection was filed or made, and that the said Local Land Office where the said selection was filed in all things approved and allowed the said selection, and on the 30th day of April, A. D. 1912, duly reported the same to the Commissioner of the General Land Office, copy of which report is hereto attached marked "Exhibit F", which is hereby referred to and made part hereof for greater certainty, and this defendant avers that said Commissioner of the General Land Office took no action thereon until the 17th day of August, A. D. 1916. And this defendant admits that the Secretary of the Interior has failed and refused to approve the said selection as made by this defendant? And this defendant avers that the Interior Department of the United States has entered a final decision so refusing to approve said selection; that said decision was made by the Assistant Secretary of the Interior acting as Secretary on appeal from the Commissioner of the General Land Office, but this defendant avers that the said failure to approve and the said refusal to approve were not, nor was either of them, upon any matter relating to the sufficiency or to the due regularity of this defendant's application or selection, or to the known character of the said land as mineral or non-mineral at the date of filing said selection, or upon any matter relating to the good faith of this defendant, or to its ignorance at the time of its selection of any of the oil deposits since developed on said land; but on the contrary thereof this defendant avers that in and by its said decision so as aforesaid finally failing and refusing to approve the said selection, the Interior Department of the United States distinctly and in terms refused to make any finding whatever in relation to the sufficiency or in relation to the due regularity of this defendant's said application and selection, and failed and re-
38 fused to make any finding as to the known character as mineral or non-mineral of the said lands in Section 19

at the date of the filing of said selection, and failed and refused to make any finding as to the good faith of this defendant in making the said selection, and failed and refused to make any finding as to the ignorance of this defendant at the time of said selection in relation to any oil deposits within the said lands. And this defendant avers that the sole ground of the failure and refusal of the officers of the Interior Department having charge of the matter to approve said selection so made by this defendant was and is the claim and pretense that oil has been discovered in said selected lands at a time long since said selection was so as aforesaid made and filed. A copy of the said final decision of the Assistant Secretary of the Interior is hereto attached marked "Exhibit G", and hereby referred to for greater certainty.

And this defendant avers that in making the said selection it acted in entire good faith and fully complied with all and singular the terms and conditions of the statutes in such cases made and provided necessary to entitled it to become vested with full title to the said selected lands in said Section 19, and fully complied with all and singular the terms and conditions of the rules and regulations of the Interior Department of the United States in making the said selections, and thereby acquired a vested interest in the said lands and became the equitable owner thereof. And defendant avers that the said lands in Section 19 at the time of said selection were not by any one known to be mineral in character, and that any change in that condition occurring subsequently to the selection of said lands by this defendant, as aforesaid, cannot affect the rights of the defendant under its said selection.

This defendant admits that heretofore, to-wit, on or about the 24th day of May, 1916, this defendant through its State Board of School Land Commissioners thereunto authorized, made and entered into an oil and gas lease of said lands
39 to the defendant H. S. Ridgely, whereby this defendant leased said lands to the said Ridgely, his successors and assigns, for the purpose of drilling, boring, operating for and [production] therefrom mineral oil and gas; but this defendant denies that the said lease was without lawful authority. And this defendant further admits that on or about the 24th day of May, 1916, the said defendant H. S. Ridgely assigned said oil and gas lease to the Greybull Refining Company mentioned in the said Bill of Complaint, and that thereafter about the 30th day of June, 1917, the said Greybull Refining Company further assigned said oil and gas lease to the defendant The Midwest Refining Company.

And this defendant further admits that subsequent to the 24th day of May, 1916, the defendant, The Midwest Refining Company, entered upon said lands and drilled certain wells thereon, and that the defendant Midwest Refining Company has on said lands certain mining property, machinery, tools and fixtures necessary to the operation of said oil wells so drilled by it, and this defendant denies that the said acts of the said Midwest Refining Company are or ever were in defiance of the order of withdrawal mentioned in said Bill of Complaint, or in violation of the proprietary or any other rights of the plaintiff or of the laws of the United States.

And this defendant admits and avers that it claims and has rights, titles and interests in and to the said lands in said Section 19, and in and to the petroleum and mineral oil and gas extracted therefrom or contained therein under and by virtue of the said selection by this defendant. And defendant further admits and avers that it has the primary interests in the said lands and the oil and other minerals therein contained and taken therefrom as the actual owner thereof. And this defendant admits that the defendant, Midwest Refining Company, is engaged in extracting oil from the said lands in said Section 19, and has extracted therefrom more than one hundred thousand barrels of a high commercial grade of oil, aggregating in value many thousands of dollars, which said oil and the proceeds thereof this defendant avers belongs to it and its co-defendants herein.

And upon information and belief this defendant admits that it is the intention of the said Midwest Refining Company to continue to extract the said oil and to sink new wells upon the said lands in said Section 19 so long as the supply of oil underlying said land shall be sufficient to warrant such extraction, in which intention this defendant concurs.

And this defendant denies that it is now appropriating, or ever appropriated or intends prior to the settlement of the controversy between the parties hereto to appropriate any of the oil or gas from any well now existing on said lands or any new well to be sunk thereon; but on the contrary this defendant avers that by an agreement between the parties hereto, all being represented, it was stipulated that the gross proceeds from the sale and disposition of the oil produced from the said lands less a deduction of ten cents per barrel for operating expenses, should be placed in the Stock Growers National Bank of Cheyenne, to await the outcome of the determination of the title to the land, the money thus accruing to follow the title to the land. And this defendant further avers

that under and pursuant to said agreement which was made and entered into as soon as oil was discovered on the said land, the gross proceeds of all the oil produced on said land, less ten cents per barrel as above agreed, have been so deposited with the said The Stock Growers National Bank of Cheyenne, and there remain to await the final settlement of the title to said lands, the said gross proceeds less the deduction aforesaid to become the property of such one or more of the parties as should finally be declared the owner, or owners, of the
41 title to the said lands. And this defendant further avers that pursuant to a further agreement between the parties the said proceeds have been, and as received are being invested in those certain bonds of the United States of America known as "Liberty Bonds", and that by the means aforesaid, through the agreement of the parties as aforesaid, all and singular the gross proceeds of all the oil obtained from the said lands are continually and safely preserved and protected for the use of such of the parties to this suit as may be found entitled thereto. And this defendant further avers that ten cents per barrel, the amount deducted for operating expenses, is less than the actual cost of such production and far less than it would cost the plaintiff herein to produce the said oil in case the plaintiffs were found entitled and should proceed in any manner possible to it to cause the oil from said lands to be produced, and far less than it would cost if said oil were produced by a receiver. And this defendant further denies that any gas has been or is being produced from the said lands. And this defendant further avers that the lands on all sides of the lands herein controversy are producing oil lands; that along the north boundary of the lands in controversy six wells are producing on lands immediately adjoining the lands in controversy; that along the south boundary on lands immediately adjoining, six wells are now producing oil; that along the east boundary on adjoining lands, one well is producing oil; that along the west boundary on adjoining lands, one well is producing oil; that each of the said wells on adjoining lands is so close to the boundary of the lands in controversy that the production of oil from the adjoining lands will necessarily drain oil from the lands in controversy, and said adjoining wells make it necessary that wells generally termed "off-setting wells" should operate near the boundary on the lands in controversy opposite each of the said wells on adjoining lands; that otherwise the value of
42 the lands in controversy would be largely destroyed within a short time by the drainage of the oil therefrom through the said wells on adjoining lands. And this defendant avers that the total number of wells on the said lands

in controversy in operation by the defendant, Midwest Oil Company, is sixteen wells, of which six are off-set wells to an equal number of wells on lands adjoining along the north boundary of the lands in controversy, six are off-set wells to wells on adjoining lands along the south boundary, one is an off-set well to a well on adjoining lands on the east boundary, one is an off-set well to a well on adjoining lands along the west boundary, and one well besides is in operation in the center of each forty acre tract. And this defendant now offers to continue the said method of protecting the said funds, and avers that the said method will preserve to the party or parties entitled a larger share of the said funds than would be possible under any receivership or other plan of operation of which it has knowledge, and that it is necessary to continue the operation of the said wells on the lands in controversy, as otherwise the oil in the lands in controversy would be largely lost to the person or persons entitled thereto through the drainage that would be accomplished by wells on adjoining lands as aforesaid.

And this defendant avers that under the facts aforesaid this defendant is the owner of the said lands and entitled to every right and interest therein save and excepting as it has disposed of certain interests under the leases aforesaid, and that the acts of the defendants in the premises are not, nor are any of said acts in violation of any right of the plaintiff, nor do they or any of them interfere with or obstruct the execution by the plaintiff of its public policy with reference to said lands, without this, that any other matter or thing ma-
43 terial or necessary for this defendant to make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and approve as this Honorable Court shall direct, and humbly prays to be hence dismissed, and for all other proper relief.

DOUGLAS A. PRESTON,
Attorney General of the State of Wyoming
and of Counsel for the State of Wyoming,
being hereunto specially authorized.

Herbert V. Lacey,
John W. Lacey,
Of Counsel.

The State of Wyoming,
County of Laramie—ss.

D. A. Preston, being first duly sworn on his oath according to law, deposes and says: that he is the Attorney General of

the State of Wyoming, and makes the above intervening answer by order and direction of said State; that he has read said answer after having investigated the facts on which the same is founded, and that the facts therein set forth are true.

DOUGLAS A. PRESTON,

Subscribed in my presence and sworn to before me this 27th day of March, A. D. 1918.

(Seal) JENNIE M. TUPPER,
Notary Public.

44 (Endorsed): Petition of the State of Wyoming to Intervene and Separate Answer of the State of Wyoming; Filed in the U. S. District Court on March 29, 1918.

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45 (Order permitting the State of Wyoming to Intervene as a Defendant, etc.)

Come now the parties by their counsel and State of Wyoming now presents to the Court her petition for leave to intervene as a defendant in said cause, submitting herself to the jurisdiction of this Court, and the plaintiff neither objects nor consents but submits the matter to the Court for its decision.

And upon the said petition of the State of Wyoming leave is now granted to the said petitioner to intervene as a defendant in said cause. And leave is granted to the State of Wyoming to file as her answer to the Bill of Complaint the answer attached to the petition for leave to intervene. And the said answer is now filed.

And said cause upon consent of all the parties has now been set down for final hearing for Monday, June 3, A. D.
46 1918.

Dated this 6th day of May, A. D. 1918.

JOHN A. RINER, Judge.

Endorsed: Filed in the District Court on May 6, 1918.

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47 (Order of Submission.)

This cause comes on now to be heard on final hearing on the Bill of Complaint, Answers of defendants, H. S. Ridgely, and The Midwest Refining Company, Answer of Intervenor, State of Wyoming, Testimony and Exhibits, Heary F. May, Esquire, Special Assistant to Attorney General, and Charles L. Rigdon, Esquire, District Attorney, appearing as

Solicitors for complainants, and John W. Lacey, Esquire, and D. A. Preston, Esquire, Attorney General for the State of Wyoming, appearing as Solicitors for defendants and intervenor, and is argued by counsel and by the Court taken under advisement.

It Is Further Ordered by the Court that the complainants be, and they are hereby, allowed to and including the Seventeenth day of June, A. D. 1918, in which to file their Brief; the defendants to and including June 28, A. D. 1918, to file their Brief; the complainants to and including July 8, A. D. 1918, to file their reply Briefs.

JOHN A. RINER,
Judge.

48 Endorsed: Filed in the District Court on June 3, 1918.

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49 (Statement of the Evidence.)

The following stipulation was entered into in open court at the hearing of the above entitled cause between the plaintiff and all the defendants, including the State of Wyoming:

It Is Agreed, First: That the base lands in Section Thirty-six (36), which were surrendered, or attempted to have been surrendered by the State of Wyoming, were surveyed, agricultural, nonmineral public lands of the United States, at the time when Wyoming was admitted as a State, and were the property of Wyoming at the time when the State of Wyoming selected, or attempted to select the lands in controversy, in said Section Nineteen (19).

Second: It is agreed that the lands in controversy, at the time of the selection, or attempted selection, by the State of Wyoming, had been classified by the Government in no way as mineral lands.

50 It is agreed that on April 4, 1912, the State of Wyoming relinquished to the United States, so far as was then within its power, the lands in Section Thirty-six (36), constituting the base lands for the selection of the lands here in controversy; the said relinquished lands in Section Thirty-six (36), being the Southeast quarter of Section Thirty-six (36), Township Fifty-three (53) North, Range Eighty-seven (87), the selection in lieu of the lands relinquished included the lands in controversy; that the relinquishment is not agreed by the Government to have been an actual re-

linquishment, but it is agreed by the Government that the State of Wyoming fully complied with any and all statutes, rules and regulations of the Land Department then existing, in so far as, if at all, such relinquishment was authorized by such statutes, rules or regulations.

It Is Agreed that the lands in controversy at the time of their selection, were unappropriated, surveyed, public lands of the United States, within the State of Wyoming.

It Is Stipulated that the defendant, The Greybull Refining Company, has been dissolved as a corporation, and that all of its rights and property became and are now the rights and property of the defendant, The Midwest Refining Company.

Plaintiff then made the following offer:

Mr. May: I wish to offer a certified copy from the records of the United States Land Office, showing the proceedings, including the attempted relinquishment, or attempted selection of the lands in controversy, and all the actions of the land department concerning it, including the final rejection of it by the Land Office.

This copy from the records was introduced and marked Plaintiff's Exhibit "A", the contents of which is fully set forth after rearrangement in order of dates, as follows:

51 Lander, 05521 fsb - 36b

State of Wyo. Department of the Interior full set

Ind. S. S. List United States Land Office. herewith

180 EDS

1 Inc.

W. T. A.

Lander, Wyoming,

April 30, 1912.

Hon. Commissioner,
General Land Office,
Washington, D. C.

Sir:

Enclosed herewith find State of Wyoming Indemnity

School selection List No. 180 which the earlier transmission was overlooked.

Very respectfully,

WILLIAM T. ADAMS
Register.

To Survey

Received
May 6 1912
G. L. O.

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52 List No. 180. Indemnity School Selections.

Lander Land District.

The State of Wyoming hereby makes application, under the provisions of the act of Congress of July 10, 1890 (26 Stats., 222), and sections 2275 and 2276, Revised Statutes of the United States, and the acts supplementary and amendatory thereto, for the following described unappropriated, non-mineral public lands, in lieu of, or as indemnity for, the corresponding school lands, or losses to its grant for common schools, assigned and designated as bases therefor, and agrees to accept the selected tracts in full satisfaction of the bases assigned, to-wit:

Losses.

Subdivision.												
NE¼	SE¼	Sec.	36	Twp.	53	Range	87	West	6	P. M.	40	Acres
NW¼	SE¼	"	36	"	53	"	87	"	"	"	40	"
S½	SE¼	"	36	"	53	"	87	"	"	"	80	"

And it is hereby certified that the State of Wyoming has not heretofore received indemnity for said assigned bases, or any portion thereof, and that there is not now pending application for indemnity for any base, or portion thereof above assigned.

(Signed) JOSEPH M. CAREY,
Governor,
President State Board of School Land Commissioners.

(Seal)

(Signed) S. G. HOPKINS,
Commissioner Public Lands—
Selecting Agent, Secretary State Board of School Land Commissioners.

The date of examination of the lands as shown on the nonmineral affidavit attached to the original selection is Feb. 12, 1912.

Selections.

"This list must not contain selections aggregating more 640 acres.

Subdivision.										Cause of Loss
SW¼ NW¼	Sec.	13	Twp.	43	Range	100	West	6 P. M.	40 acres	Big Horn Nat'l Forest Reserve
SE¼ NE¼	"	14	"	43	"	100	"	" " "	40 "	"
N½ SE¼	"	19	"	46	"	98	"	" " "	80 "	"

I, S. G. Hopkins, hereby certify that I am the official custodian of the records of the State of Wyoming pertaining to the care and disposal of school lands in said State, that the records of my office show that the State of Wyoming has not sold or disposed of, or contracted to sell or dispose of, any of the lands described in the within list and designated as the basis for indemnity or lieu selection, and that the said lands are not in the possession of or subject to the claim of any person under any law or permission of the State.

(Seal) (Signed) S. G. HOPKINS,
Commissioner of Public Lands.

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53 fsh - 39b

Nonmineral, Nonsaline, and nonoccupancy Affidavit.

Louis G. Phelps, being duly sworn according to law, deposes and says that he is over twenty-one years of age, and a citizen of the United States; that he is well acquainted with the following described lands, to-wit: N½ of SE¼ of Sec. 19, Tp. 46 N., Range 98 W. 6th P. M. Wyoming, and with each and every legal subdivision thereof, having made a personal examination of same on or about February 12th, 1912, that his personal knowledge of said land enables him to testify understandingly with regard thereto, and that to his knowledge there is not within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge any placer, cement, gravel, phosphate, or other valuable mineral deposit; that the land contains no salt spring or deposit of salt in any form sufficient to render it valuable chiefly therefor; that no portion of said land is claimed for mining purpose under the

local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that the land is unappropriated and essentially nonmineral in character, and is not occupied by nor does it contain improvements placed thereon by any Indian, and the same is true as to each and every legal subdivision thereof, and that affiant's post-office address is Meeteetse, Wyoming.

LOUIS G. PHELPS.

I Hereby Certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; the said affiant is to me personally known, and I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was sworn to and subscribed
54 to before me at my office in Cody, Park County, Wyoming, on the 29 day of March, 1912.

(L. S) V. G. LANTRY,
(Seal) Notary Public.

5/6/12?

Note—The foregoing affidavit may be made before any officer, having a seal, authorized by law to administer oaths within the State or Territory where the land is situated, and may be made upon a separate form, embracing proper description of land, and attached with an adhesive over the printed form in the list.

State Selections.

55 fsh - 40b

I, S. G. Hopkins, hereby certify that I am the official custodian of the records of the State of Wyoming pertaining to the care and disposal of school lands in said State; that the records of my office show that the State of Wyoming has not sold or disposed of, or contracted to sell or dispose of any of the lands described in the within list and designated as the basis for indemnity or [liou] selection, and that the said lands are not in the possession of or subject to the claim of any person under any law or permission of the State.

S. G. HOPKINS,
Commissioner of Public Lands.

United States Land Office at Lander, Wyoming.

April 4th, 1912.

We hereby certify that the foregoing list No. 180 of indemnity school land selections, containing 160 acres, was filed

in this office Apr. 4, 1912, accompanied with the legal fees amounting to $2.00; and there is not of record in this office any adverse filing, entry, or claim to the land selected by the State, and that the filing of said list is this day allowed and approved.

WILLIAM T. ADAMS,
Register.

Publication ordered Apr. 4th, 1912, in the Meeteetse News, published at Meeteetse, Wyoming,

W. S. ADAMS,
Register.

Published from day of , 190 , to day of , 190 . (See)

Clerk, G. L.

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56 fsh 35 b

State Land Notice

Department of the Interior

United States Land Office,

Lander, Wyoming, April 5, 1912.

To Whom it May Concern:

Notice is hereby given that the State of Wyoming has filed in this office application to select lists of land situated in the townships described herein; that the lists are open to public inspection, and a copy thereof by descriptive subdivision has been posted in a convenient place in this office for the inspection of all persons interested and of the public generally.

List 180, serial 05521, for SW¼NW¼, Sec. 13, SE¼NE½, Sec. 14, T. 43 N., R. 100 W., and N½SE¼, Sec. 19, T. 46 N., R. 98 W., 6th P. M., in Wyoming.

Protests or contests against the claim of the State to any of the tracts or subdivisions herein described on the ground that the same is more valuable for mineral than for agricultural purposes will be received for filing prior to approval and certification and forwarded to the General Land office at Washington, D. C. for action.

WILLIAM T. ADAMS,
Register.

C. A.

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57 (Copy)

Department of the Interior

United States Land Office

Lander, Wyoming,

July 30, 1912.

Lander, 05521.
Transmitting affidavit of publication, certificate of posting, report of C. F. D. and [non-encumbrance] certificate.
4 inc.

C. A.

Honorable Commissioner,
General Land Office,
Washington, D. C.

Sir:

I have the honor to transmit, herewith, affidavit of publication, certificate of posting in this office, report of the C. F. D. #7, and [non-encumbance] certificate, filed in connection with State selection list 180, serial 05521.

Very respectfully,

W. T. ADAMS,

Register.

C. A. C. A.

Received Aug 5, 1912

G. L. O.

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58 June 10 1912 9 A M

Serial No. 05521.
Act of July 10, 1890.

Affidavit of Publication.

State Land Notice

Receipt No. 813011.

Department of the Interior

Area 160 acres.

United States Land Office,
Lander, Wyoming, April 5, 1912.

To Whom it May Concern:

Notice is hereby given that the State of Wyoming

State of Wyoming,
County of Park—ss.

W. H. Baker, being duly sworn, deposes and says

has filed in this office application to select lists of land in the townships described herein; that the lists are open to public inspection, and a copy thereof by descriptive subdivisions has been posted in a convenient place in this office for the inspection of all persons interested and of the public generally.

List 180, serial 05521, for SW¼ NW¼ section 13, SE¼ NE¼ section 14, township 43 north, range 100 west, and N½ SE¼ section 19, township 46 north, range 98 west, sixth principal meridian in Wyoming.

Protests or contests against the claim of the State to any of the tracts or subdivisions herein described on the ground that the same is more valuable for mineral than for agricultural purposes will be received for filing prior to approval and certification and forwarded to the General Land Office at Washington, D. C. for action.

WILLIAM T. ADAMS,
Register.

April 13, May 11.

that he is the publisher of the Meeteetse News, a newspaper of general circulation published once each week at Meeteetse, in Park County, State of Wyoming; that the notice of State of Wyo. entitled State Land Notice List 180 Ser. 05521 a copy of which is hereto attached was published in said newspaper 5 consecutive weeks, the first publication being on the 13 day of Apr. 1912, and the last on the 11 day of May, 1912, that said notice was printed in every copy of each issue of said paper during the period and times of its publication, in the newspaper proper, and not in the supplement.

W. H. BAKER,
Publisher.

Subscribed and sworn to before me this 13 day of May, 1912.

ROBERT J. McNALLY,
U. S. Commissioner for the District of Wyoming

My commission expires 8 November, 1915.

My commission expires 8 November, 1915.

59

fsh - 33b

Serial No. 05521

Act of July 10, 1890

Receipt No. 813011

Area 160 acres.

The State of Wyoming,
County of Johnson—ss.

I, R. O. Watkins, County Clerk and ex-officio Register of deeds in and for the County of Johnson, in the State of Wyoming, do hereby certify that no instruments are of record or on file in this office, purporting to convey, or in any way encumber the title to any of the following lands,

SE¼ Sec. 36, Twp. 53 Range 87

except a relinquishment from the State of Wyoming to United States assigned as a basis for the selection of indemnity land, State Selection List No. 180, Serial 05521, Lander, U. S. Land Office, Wyoming.

In Testimony Whereof, I have hereunto set my hand and official seal this 10 day of May, A. D. 1912.

R. O. WATKINS,
County Clerk and Ex-officio Register of Deeds for
County.

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60 fsh 34b

Serial No. -5521

Act of July 10, 1890

Receipt No. 813011

Area 160 acres.

Certificate as to Posting of Notice.

Department of the Interior.

U. S. Land Office, Lander, Wyo., Serial No. 05521.

July 30, 1912.

I Hereby Certify that a notice, a copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of 116 days, I having first posted said notice on the 5th day of April, 1912. No protests or contests were filed in this office against the allowance of the selection.

W. T. ADAMS, Register.

the ground that the same is more valuable for mineral than for agricultural purposes will be received for filing prior

to approval and certification and forwarded to the General Land Office at Washington D. C. for action.

WILLIAM T. ADAMS,
Register.

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61 Copy.

fsh—28 b

In reply please [refere] to Lander 05521 "G" J. O'C.

Department of the Interior

General Land Office

Washington

July 29, 1915.

Address only the Commissioner of the General Land Office.

Instructions.

Register and Receiver,
Lander, Wyoming.

Sirs:

On April 4, 1912, there was filed in your office Wyoming indemnity school land selection list No. 180 (Lander 05521), selecting, besides other land, in the N½ SE¼, Sec. 19, T. 46 N., R. 98 W., 6th P. M. The tract described was included in Petroleum Reserve No. 32, by Executive Order of May 6, 1914.

In accordance with paragraph 10-b of departmental instructions of March 20, 1916 (Circular No. 393), under the act of July 17, 1914 (39 Stat., 509), you will advise the State that certification of the selection of the tract described, if made, will contain reservation of the petroleum deposits, in accordance with the act of July 17, 1914, unless within thirty days said State files in your office an application for classification of said land as non-mineral, together with a showing, preferably the sworn statements of experts or practical miners, of the facts upon which is founded the knowl-
62 edge or belief that the land aforesaid is not valuable for mineral. In the event the application is denied, the State will be allowed a hearing at which the burden of proof will be upon it, to show that the tract is not valuable

for petroleum. If it fails to file an application for non-mineral classification within the time allowed, you will so report, and make proper notations on your records.

Very respectfully,

D. K. PARROT,
Assistant Commissioner.

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63 Copy

fsh—24b

Department of the Interior

United States Land Office

Lander, Wyoming, N 6-2-16

May 31, 1916.

Lander 05521
"G" J. O'C.
Transmitting
letter from
State Land Com.
1 inc.
C. A.

Honorable Commissioner,
General Land Office,
Washington, D. C.

Sir:

Referring to above letter, dated July 29, 1915, I transmit, herewith, a letter from S. G. Hopkins, State Land Commission, for the State of Wyoming, declining to accept the limited patent.

Very respectfully,

JOHN W. COOK,
Register.

C. A.

Received
June 5 1916
G. L. O.

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64 May 31 1916 9 A. M. FSH—25b

transmitted by S. G. Hopkins, Serial No. 05521
State Land Com., Act July 10, 1890
Cheyenne, Wyo. Area 160 Receipt No.

The State of Wyoming

Office of

Commissioner of Public Lands

Cheyenne

S. G. Hopkins, Commissioner
Miss W. F. Stuart, Deputy.

May 25, 1916.

Register and Receiver,
Lander, Wyoming.

Sirs:

I refer to the letter of the Commissioner of the General Land Office to the Register and Receiver, of Lander, Wyoming, Lander 05521, "G", JO'C, dated July 29, 1915, in which the Register and Receiver of the Land office at Lander, are instructed to advise the State of Wyoming that certification of the selection of the N½ SE¼ of Section 19, Township 46 North, Range 98 West of the Sixth P. M., for a limited patent to said tract, will be made under the Act of July 17, 1914 (38 Stat. 509), unless the State applies for a classification of said land as non-mineral and makes a showing that said land is not valuable for mineral.

On April 4, 1912, the State of Wyoming made school land selection No. 180, Lander 05521, selecting, besides other land, the N½SE¼ of Section 19, Township 46 North, Range 98 West of the Sixth P. M., in lieu of the S½SE¼ of Section 36, Township 53 North, Range 87 West, located in the Big Horn Forest Reservation, and in making said selection did relinquish and convey to the United States the said S½SE¼ of Section 36, Township 53 North, Range 87 West.

According to the records of this office, the State of Wyoming has complied with all the provisions of the law with respect to the exchange of lands in the forest reserve for lands lying outside of the forest reserve, and has also complied with all the requirements, rules and regulations with

respect to selection of lands in lieu of lands belonging to the State situated in a forest reserve.

This tract of land in question was selected in lieu of a tract of land granted to the State and situated in a forest reserve. The Department of the Interior has repeatedly held that the State had the right to select land outside of the forest reserves in lieu of lands granted to it within the forest reserves. This is evidenced by the fact that more than three hundred thousand acres of land has been selected by the State of Wyoming outside of the forest reserves in lieu of the lands granted to the State lying within forest reserves, and said selections have been clearlisted to the State, and these lieu selections have been clearlisted to the State without regard as to whether the lands relinquished by the State within the forest reserves were surveyed or unsurveyed.

65 fsh—26b

Register and Receiver, Lander, Wyo., #2

If Congress has authorized the relinquishment by the State of Sections 16 and 36 embraced in a forest reserve and the selection of lands outside of the forest reserve in lieu thereof, and if the State by legislation enactment has authorized such relinquishment and such lieu selections, [the], when the State relinquished the tract of land included in the forest reserve above mentioned, to the United States, and made application for an equal number of acres of land outside of the forest reserve, the right of the State of Wyoming to the lands embraced in said school selection vested in the State at such date. (See Kern Oil Co., et al. vs. Clark, 30 L. D. 550-554) See also Daniels vs. Wagner, 237 U. S. 547).

I am aware, of course, that the Honorable Secretary of the Interior has heretofore taken the position that school selections, such as the one herein mentioned, do not pass title to the lands selected, to the State, unless and until said selection has been approved by the Secretary of the Interior. In this connection, my attention has been called to "Administrative" ruling, 43 L. D. 293, and the authorities cited at the end of said decision. The said rulings of the Secretary of the Interior are entitled to great respect; but inasmuch as the courts of the United States, and especially the Su-

preme Court of the United States, have not passed directly upon the question, and in view of the fact that the State of Wyoming and its officers, long prior to the presidential order of withdrawal of May 6, 1914, and long prior to the Act of July 17, 1914, and long prior to any knowledge on the part of anyone that the lands involved were of mineral character, did all that was required of them under the law and under the rules and regulations of the Land Department, I feel that I should not be called upon to accept the rulings of the Secretary of the Interior in regard to this matter, but to take such action as may eventually have the question referred to the Judiciary Department of the United States Government.

In view of the trust imposed upon the State by virtue of the grant of the lands to the State for school purposes, it would seem that the laws in relation thereto should be liberally construed in favor of the State, to the end that the purpose of the grant may be carried out and the schools of the State receive the greatest benefit possible from the beneficence of Congress.

Congress, in its wisdom, authorized the exchange of lands granted to the State lying within forest reservations for lands outside of the reservations. The Interior Department prescribed rules and regulations providing for such exchanges. It laid down to the State the things it must do in order to select lands in lieu of lands in such reservations. The State did its part. It complied with every requirement of the Government. It relinquished and re-conveyed the land in the forest reservation and selected the tract in lieu of it; it was authorized to do so by act of its own legislature. It has been in possession of the land ever since the approval of the selection by the local land office and the issuance to it of the final receipt.

66 fsh—27 b

Register & Receiver, Lander, Wyo., #3.

At the time of selection and for years afterwards, there was no knowlede upon the part of either the Government or the State, and neither Government or State officials had any reason to believe that the lands selected contained valuable minerals. And now, it seems rather unfair, at this late date, that the parent government shall contend that the

title to this land and the right of the State to it shall depend upon conditions and known facts at this date rather than upon conditions and known facts at the time the selection was made and the State complied with the Act of Congress and the rules prescribed by the Secretary of the Interior.

This land was selected for the benefit of the common schools of the State; and if the Federal Government takes the land from the State now, it takes from the school children of the State the benefit of an income that, in the judgment of the writer they are in all justice entitled to.

The Commissioner for the State feels that the General Government, in dealing with the State in matters of this kind and for this purpose, should be liberal in its construction of the law; that it should not take advantage of its own laches in its failure to clear list this land to the State long before any minerals were discovered thereon, and thus defeat the State's title thereto.

It is admitted that the State's right to this land was initiated prior to that of any mineral entry, and consequently the rights of a mineral entry cannot enter into this question between the State and the Federal Government; and while I fully understand that the State must abide by the laws of the land, and that its property rights must be obtained as individual property rights are obtained under the law, yet, in this case the adjudication of the rights of the State should be based upon the known facts at the time its selection was made and it had complied with the Act of Congress and the requirements of the Department of the Interior.

Holding these views, the Commissioner for the State respectfully declines to accept limited patent for this tract of land and urges that full and complete title to the same may be clearlisted to the State.

Very truly,

S. G. HOPKINS,
Commissioner.

67 (Copy)

fsh—21 b

In reply please refer to Lander 05521 "FS" FSH

1 x R. and R.
1 x C. F. D.

Department of the Interior

General Land Office

Washington

August 17, 1916.

Address only the
Commissioner of the General
Land Office.

Register and Receiver,
Lander, Wyoming.

Sirs:

On April 4, 1912, the State of Wyoming filed indemnity school land selection list No. 180, serial 05521, embracing besides other lands the N½ SE¼ Sec. 19, T. 46 N., R. 98 W. The tract described was included in Petroleum Reserve No. 32, the Executive Order of May 6, 1914, pursuant to the act of June 25, 1910 (36 Stat., 847). The township was suspended from entry, etc., pending resurvey on April 26, 1915, Group 32.

By letter of July 29, 1915, you were directed to issue notice in accordance with the instructions of March 20, 1915, circular No. 393, under the act of July 17, 1914, (38 Stat., 509), to the effect that certification of the tract described if made would contain reservation of the petroleum deposits in accordance with the act of July 17, 1914, unless within thirty days the State filed an application for classification of the land as non-mineral, etc.

On September 23, 1915, you reported that after notice no action had been taken, transmitting as evidence of service registry return receipt signed by the agent of S. G. Hopkins, and on May 31, 1915, you forwarded a letter from S. G. Hopkins, Commissioner of Public Lands of the State of Wyoming, declining to accept patent with reservation of oil and gas to the United States, and asking that full and complete title be clear listed to the State.

The land described being included in a withdrawal under the act of June 25, 1910, the Department has no power to approve the selections except with reservation under the act of July 17, 1914 (Administrative Ruling of the Secretary of the Interior, 43 L. D., 293). The State after due notice having formally refused to accept certification with reservation, such action will be construed as a waiver of and refusal to apply for certification with such reservation or for a non-mineral classification of the land and the selection is therefore hereby held for cancellation as to the N½ SE¼ Sec. 19, T. 46 N., R. 98 W., subject to the right of appeal. You will issue notice hereof immediately and promptly report the action taken hereunder.

Very respectfully,

CLAY TALLMAN,
Commissioner.

D. A. Millrick.

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68 (Decision of the Department of the Interior.)

Received
March 5, 1917

Commissioner of Public Lands

Department of the Interior
Washington

October 25, 1916.

D-33488

Ex parte
State of Wyoming.

"FS"
Lander—05521
Cancellation of indemnity school land selection.
Affirmed.

Appeal For The General Land Office.

April 4, 1912, the State of Wyoming filed indemnity school land selection list No. 180, Serial 05521, at Lander, Wyoming, embracing the "N½ SE¼, Sec. 19, T. 46 N., R. 98 W., 6th P. M." This land was included in Petroleum Reserve 32, by Executive order of May 26, 1914, made under the act of June 25, 1910 (36 Stat., 847).

July 29, 1915, the Commissioner directed the register and receiver to call upon the State either to apply for a classification of the land as nonmineral or to file its election to take a surface patent under the act of July 17, 1914 (38 Stat., 509). The State failed to file an application for a non-mineral classification and declined to take a patent as provided for under the act of July 17, 1914, supra. The selection was then held for cancellation by the Commissioner in a decision dated August 17, 1916, from which an appeal to the Department has been perfected.

The State contends in effect that having done all that it was required to do when the selection was filed, equitable title vested in it from that date and the later discovery that the land is valuable for oil does not interfere with its right to secure patent for the land in fee instead of the surface patent provided for in the act of July 17, 1914, supra. The appellant further states in its brief—

69 No fault on the part of the State is suggested in any particular regarding the selection here in question. It is not even alleged more or less shown, that this tract was of known mineral character at the time the selection was filed. In fact, we believe it will be conceded that it was not of known mineral character when the State's selection was filed, and that said selection was filed in entire good faith, without regard to the oil since shown to be in valuable quantities beneath its surface.

In support of the State's contentions the cases of Kern Oil Company et al., vs. Clarke (30 L. D., 550), and Daniels vs. Wagner (237 U. S., 547), are cited.

Kern Oil Company et al. vs. Clarke involved forest reserve lieu selections under the act of June 4, 1897 (30 Stat., 11, 34-6), as amended by the act of June 6, 1900, (31 Stat., 588, 614). Particular attention is called to the Department's statement at page 556—

* * * that the conditions with respect to the state or character of the land, as they exist at the time when all the necessary requirements have been complied with by a person seeking title, determine the question whether the land is subject to sale or other disposal, and no change in such conditions, subsequently occurring, can impair or in any manner affect his rights.

It is sufficient to point out that Kern Oil Company et al. vs. Clarke as far as the question here involved is concerned, was in effect overruled by the decisions in Miller v. Thompson (36 L. D., 492), and Thomas B. Walker (36 L. D., 495), in which reference was made to the cases of Cosmos Company vs. Gray Eagle Company (190 U. S., 301), and Clearwater Timber Company vs. Shoshone County (155 Fed. Rep., 612.)

In Daniels vs. Wagner the appellant calls particular attention to the third paragraph of its syllabus—

70 One who has done everything essential, exacted either by law or the lawful regulations of the Land Department, to obtain a right from the Land Office conferred upon him by Congress, cannot be deprived of that right either by the exercise of discretion or by a wrong committed by the Land Officers.

Daniels vs. Wagner involved the rights of a forest reserve lieu selector under a prior selection as against individuals who received patent under subsequent homestead and timber and stone entries. The land department there had claimed the right under its discretionary power to reject a prior reserve lieu selection and patent the land to subsequent claimants. This the Supreme Court held was beyond its power. The case in no wise involved the question as to the character of the land, in fact at page 561, the Court expressly refers to this prior decision in Cosmos Company vs. Gray Eagle Oil Company, supra, stating that it had there declined to hold that the land department was not at liberty to determine the question as to the mineral character of the lands sought to be entered because that inquiry arose after entry and before its final allowance.

The grant to the State of Wyoming was made by the act of July 10, 1890, (26 Stat., 222). Section 4 states that the indemnity lands are to be selected within the State in such manner as the legislature may provide "with the approval of the Secretary of the Interior." Section 13 provides "that all mineral lands shall be exempted from the grants made by this act." Section 2276, Revised Statutes, as amended by the act of February 28, 1891, (26 Stat., 796), provides that indemnity selections shall be made "from any unappropriated surveyed public land, not mineral in character."

The Department has uniformly held that no title is acquired by a school indemnity selection until it has been duly

approved. See Tonner vs. O'Neill (15 L. D., 559); Todd vs. State of Washington (24 L. D., 106); Kinkade vs. State of California (39 L. D., 491); State of California et al. (41 L. D., 592); Administrative Ruling of July 15, 1914, (43 L. D., 293). In Kinkade vs. State of California, the second
71 paragraph of the syllabus reads:

No title is acquired under or by virtue of a school indemnity selection until the same has been duly approved and certified, and prior thereto a disclosure that the land is mineral will defeat the selection.

The above statement of the law is given by Lindley (Lindley on Mines, 3rd edition, section 143), as follows:

Be this as it may, until the selection is finally approved by the officers of the government charged with his duty, and the land is certified or listed to the state, the state has no title which it can convey to the purchaser.

Without such approval, neither the state nor its grantee can question any further disposition which the United States may make of the land embraced in the attempted selection.

Among the supporting cases cited by Lindley is that of Wisconsin Central Railroad Company vs. Price County (133 U. S. 496), which involved a railway indemnity selection. The Supreme Court there state at page 513.

The uniform language is, that no title to indemnity lands become vested in any company or in the State until the selections are made; and they are not considered as made until they have been approved, as provided by the Statute, by the Secretary of the Interior.

Under the above authorities the Department is of the opinion that it can not be questioned that title does not vest in the State under a school indemnity selection until said selection has been duly approved and that a discovery of mineral, prior to such approval, will defeat the selection. Such selections are restricted to non-mineral land and the duty is imposed upon the Secretary of the Interior to ascertain such character before giving his approval, and it being ascertained in this case that the land is in character mineral, the selection can not be approved.

The decision of the Commissioner is accordingly affirmed.

(Signed) BO SWEENEY
Assistant Secretary.

72 Motion for Rehearing.

Received
Feb. 22 1917

Commissioner of Public Lands

Department of the Interior

Washington

D-33488 February 17, 1917.

"FS"

Lander 05521

State of Wyoming.

Rejection of school land indemnity selection.

Motion denied.

The State of Wyoming has filed a motion for rehearing in this case in which the Department, by its decision of October 25, 1916, affirmed the action of the Commissioner of the General Land Office, holding the State's indemnity school land selection list No. 80, Serial No. 05521, for cancellation as to the N½ SE¼, Sec. 19, T. 46 N., R. 98 W., 6th P. M., Lander, Wyoming, land district.

April 4, 1912, the State filed its application to select said lands with other tracts not here involved. The tract above described was included in Petroleum Reserve No. 32, by Executive order of May 6, 1914, pursuant to the act of June 25, 1910 (30 Stat., 847), as amended by the act of August 24, 1912 (37 Stat. 497). In connection with the pending motion counsel have conceded the present oil character of the land. They say—

That it is fully understood that since the selection of this land, oil has been discovered, and in paying quantities upon this land, by the lessees of the State, who are in possession of the land.

The State has declined to apply for or accept a restricted patent reserving the oil and gas deposits under the act of June 17, 1914, (38 Stat., 509). The provisions of that act are not here involved.

73 The State contends that upon the filing of a complete application to select, complying with the requirements of the law and departmental regulations, it became possessed of a vested right and interest in the land and entitled to have

its claim adjudicated as of the date of such filing. It is also urged that as approval and certification, when made, will relate back to the date of the filing of the application, conditions existing at that time are controlling, and if the land was then not known to be mineral in character the selection should be approved. With counsel's contention the Department can not agree. Two insuperable barriers preclude approval of this selection. The first is the Executive order withdrawing the land. The second is the fact that the tract is mineral (oil) land. Either of these necessarily stays the hand of the Secretary of the Interior.

The act of June 25, 1910, supra, provides that the President may at any time, in his discretion, withdraw any of the public lands and reserve in same and that such withdrawals and reservations shall remain in force until revoked by him or by an act of Congress. Certain forms of disposition and certain classes of pending claims are specifically excepted from the force and effect of any withdrawal order so made. A school land indemnity selection presented by a State is not so excepted. The Executive withdrawal of May 6, 1914, attached to the land notwithstanding the State's pending application. In the case of State of California et al. (41 L. D., 592-597), it was said:

Moreover, since the President has, on account of their mineral character, withdrawn these lands from disposition, it is evident that the Secretary has no authority to approve the selections, and they must therefore be rejected.

The administrative ruling of July 15, 1914 (43 L. D., 293), concluded as follows:

Congress having power to withdraw lands and devote them to public use, notwithstanding the existence of the inchoate claims mentioned, having authorized the withdrawals
74 and reservations by the act cited, and withdrawals having been made for public purposes, as prescribed in the act, the Secretary of the Interior has no power or authority to approve or accept such selections or exchanges or to relieve them from the force and effect of an existing reservation.

This ruling has been uniformly followed. See the cases of the State of California et at., 44 L. D., 27, 118 and 127. In the face of the outstanding withdrawal this Department can not approve the selection.

Mineral lands do not in any event pass to the State. The act of June 10, 1890 (26 Stat., 222-224), admitting Wyoming to the Union, provides in Section 13:

That all mineral lands shall be exempted from the grants made by this act.

For the school sections in place, if found to be mineral, an equal quantity of other land is to be selected.

Section 14 prescribed:

That all lands granted * * * as indemnity by this act shall be selected under the direction of the Secretary of the Interior.

The act of February 28, 1891 (26 Stat., 796) amending Section 2275 and 2276 Revised Statutes, provides for indemnity selection in general and expressly prescribes that indemnity lands "shall be selected from any unappropriated, surveyed public lands, not mineral in character, within the State."

The land department is charged with the duty of determining the character of lands and also it must determine the date subsequent to which the mineral question is foreclosed. The general rule is that when a public land claimant has done all that the law and authoritative regulations prescribe and has obtained an equitable title to and a vested interest in the land, any subsequent discovery or disclosure of mineral does not affect or impair his rights. Until approved by the Secretary of the Interior no equitable title or vested right accrues under an indemnity school land selection.

75 In the case of Wisconsin Railroad Co. vs. Price County, (133 U. S. 496, 512-513) with respect to railroad indemnity, the court used the following language:

Until the selections were approved there were no selections in fact, only preliminary proceedings taken for that purpose; and the indemnity lands remained unaffected in their title. Until then, the lands which might be taken as indemnity were incapable of identification; the proposed selections remained the property of the United States. The Government was, indeed under a promise to give the company indemnity lands in lieu of what might be lost by the causes mentioned. But such promise passed no title, until it was executed, created no legal interest which could be enforced in the courts. The doctrine, that until selection made no title vests in any indemnity lands, has been recognized in several decisions of this court.

* * * * * * * * * * * *

The uniform language is, that no title to indemnity lands becomes vested in any company or in the State until the selections are made; and they are not considered as made until they have been approved, as provided by statute, by the Secretary of the Interior.

In the case of the Sioux City Railroad Co. vs. Chicago Railway (117 U. S., 406, 408), it was said:

No title to indemnity lands was vested until a selection was made by which they were pointed out and ascertained, and the selection made approved by the Secretary of the Interior.

In Stalker vs. Oregon Short Line (225 U. S., 142, 149), it was said:

The principle is that which has been many times applied in conflicting claims of indemnity lands, under railroad land grants. In such cases the patent, when issued, is held to relate to the date of the filing of the railroad company's list of selections in lieu of place lands lost, thereby defeating adverse rights initiated after the actual filing of the lists of selections. The same rule has likewise been applied
76 to lists of selections made by States to which a grant has been made subject to location. In both classes of cases, it has been many times ruled that while no vested right against the United States is acquired until the actual approval of the lists of selections, the Company does acquire a right to be preferred over such an intervenor.

This principle with respect to approval has been specifically applied to school indemnity by the Supreme Court of California in the case of Robert vs. Gebhardt (104 Cal. 68; 37 Pac., 782), where it was said:

In the first place, the selection made by the State upon application of the plaintiff was not approved by the Secretary of the Interior, and therefore such attempted selection did not give to the State any legal or equitable right to the land therein described. In the case of Buhne vs. Chism, 48 Cal. 471, this court, in passing upon the effect of such a selection, and the necessity for its approval by the secretary of the interior, said: "We think the approval of the Secretary of the Interior was essential to a valid selection and location by the State; and that it was incumbent on the plaintiff to show affirmatively that he had appproved it. The act of March 3, 1853, provides in terms that the selections shall be

subject to his approval, and we have no authority to dispense with it. This condition was doubtless inserted for the reason that, in the opinion of the highest officer of the land department, the land might be required in the future for public uses; and it was intended that he should exercise his judgment in the premises before the selection should be valid."

* * * * * * * * * * * *

It is the consent of the United States, as manifested by the approval of the Secretary of the Interior, which gives legal efficacy to the application or selection made by the state; and without such approval neither the state nor its grantee is in a position to call in question any future disposition which the United States may make of the land embraced in the attempted selection.

77 See also Cape Modocino Lighthouse Site, 14 Ops. Attys. Gen., 50, and Portage Land Grant, Ib. 645.

The decisions of the Department have uniform to the effect that until approval a state has no vested right or interest as against the Government. In Tonner vs. O'Neill (15 L. D., 559) it was held that no title was acquired by school indemnity selection until the same had been duly approved and certified, and that an attempted sale by the State prior to approval conveyed no right or title to the purchaser. In the case of the State of Washington (36 L. D., 371), it was decided that an approval of the selection was essential to the passing of the title and the acquisition by the selector of a vested right.

It is well settled in departmental practice that the disclosure or discovery of mineral prior to approval defeats an indemnity selection. See the cases of Walker vs. Southern Pacific Railroad Co., (24 L. D., 172); Swank vs. State of California (27 L. S., 411); McQuiddy vs. State of California (29 L. D., 181); Kinkade vs. State of California (39 L. D., 491), and State of California (41 L. D., 592).

From the foregoing it follows that the State of Wyoming has obtained no equitable title or vested right in or to the lands sought. Being mineral lands they are interdicted and do not pass to the State under its grant.

The suggestion that conditions existing at the date of application are controlling is not new and possesses no merit. In the Case of Swank vs. California, supra, the following appears:

It is conceded by the defendants that the land is not subject to the State's selection if it was of known mineral character when the application of the State was filed, but it is contended that the subsequent discovery of mineral therein could not effect the right of the State. This contention is not sound. The law governing the right of the State to indemnity school land is in every essential respect similar to the law governing the right of a railroad company to select indemnity lands under its grant.

78 In the case of Walker vs. Southern Pacific Railroad Co. (24 L. D., 172) the Department held (syllabus):

Prior to the approval of a railroad indemnity selection the land included therein, if mineral in character, is open to exploration and purchase under the mining laws of the United States.

With reference to the case of Cosmos Company vs. Gray Eagle Company (19) U. S., 301), cited in the decision under review, counsel state that they fail to find in that opinion, any support for the decision on appeal herein. In the course of its opinion the Supreme Court, considering a forest lieu selection, said:

The complete equitable title * * * can not exist until a favorable decision by that (land) department has been made regarding the sufficiency of complainant's proof of his right to the selected land. That question the department is competent and it is its duty to decide. It may be that when the decision of the Land Department is made, if it be favorable to the applicant, the complete equitable title claimed will accrue from the time the selection of the land was made in the local land office, and when the patent subsequently issues the legal title will vest from the time of selection. But before any decision is made, how can there be an equitable title? * * * There must be a decision made somewhere regarding the rights asserted by the selector of land under the act before a complete equitable title to the land can exist. The mere filing of papers can not create such title. The application must comply with and conform to the statute and the selector can not decide the question for himself.

We do not see how it can be successfully maintained that, without any decision by any official representing the Government, and by merely filing * * * the selector has thereby acquired a complete equitable title to the selected lands. The selector has not acquired title simply because he has selected land which he claims was at the time of the selection vacant

land open to settlement. * * * Until the various questions of law and fact have been determined by that department in favor of the complainant, it can not be said that it has a
79 complete equitable title to the lands selected.

The foregoing emphasizes the principles that a selector gains no complete equitable title until favorable action or approval by the land department with respect to the selection. The case of Daniels vs. Wagner (237 U. S., 547) is relied upon by the State. It was there held (Syllabus):

One who has done everything essential, exacted either by law or the lawful regulations of the Land Department, to obtain a right from the Land Office conferred upon him by Congress, can not be deprived of that right either by the exercise of discretion or by a wrong committed by the Land Officers.

The case is not in conflict with the principle announced in the Cosmos case. In the Daniels case no question of the mineral character of the land was presented. That controversy was between claimants asserting rights under the non-mineral land laws. Priorities were in question. This Department has disregarded the rights of the prior forest lieu applicant and had patented the lands to junior homestead and timber land claimants. This was done under the assumption that the officials of the land department possessed a broad discretionary power to so dispose of the land upon equitable considerations. The court decided that there was no basis for the assumption of such a discretionary power. The Cosmos Company vs. Gray Eagle Company case was commented upon but was not overruled or modified. The court did not decide that the lieu selector, by compliance with all the essential requirements of the law and regulations, had obtained a vested equitable title to or a vested interest in the land. It was decided that by the acts of the lieu selector he acquired priority and a right that was paramount to subsequent claims.

Counsel have requested that specific findings be made to the sufficiency and due regularity of the State's application, as to the asserted fact that the land was not known to possess mineral value at the date of filing and as to the good faith
80 of the State and its ignorance of the oil deposits since developed, when it applied. Findings with respect to these matters are sought because it is believed that litigation will ensue and that such findings would be of avail on behalf of the State. The Department must decline to undertake an adjudication of the questions suggested. In connection with the present record, where no hearing has been had, matters of good faith and the known character of the land as of the date of filing, can not with propriety be determined. An adjudi-

cation with respect to the questions suggested is not necessary for complete determination as to the validity of the State's application and a final disposition of this case before the Department. The Department is convinced that until a full equitable title arises the question of the mineral character of the land is open for determination. The land here involved having been withdrawn by the Executive and being mineral in character, does not pass to the State under its application to select. The State's proffered school land indemnity selection as to the tract here involved will stand rejected.

The motion for rehearing is denied.

(Signed) ALEXANDER T. VOGELSANG,
First Assistant Secretary.

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81 Copy

feh — 2b

In reply please refer to D 33488
Department of the Interior

Washington

February 17, 1917.

Address only

The Secretary of the Interior

Ex parte

State of Wyoming
vs.

05521 Lander, Wyo.

FS Motion denied Feb. 17, 1917.

The Commissioner of the
General Land Office.

Sir:

I inclose herewith the record in the above-entitled case, the decision of this Department therein having become final.

Very respectfully,
ALEXANDER T. VOGELSANG,
First Assistant Secretary.
TRM

Received
Feb
17
1917

Feb. 19, 1917

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82 Copy fsh — 1 b

In reply please refer to—Lander 05521 "FS" FSH

1x B & G.
1x C. F. D.

Department of the Interior

General Land Office,

Washington, D. C. February 26, 1917.

Ex parte) Involving Indemnity School Land Sel.
) list No. 180 made April 4, 1912 for
State of Wyoming) N½ SE¼ Sec. 19, T. 46 N., R. 98 W.
)
vs.)
)

Register and Receiver,
Lander, Wyoming.

Sir:

In reference to the above-entitled case, you are advised that the decision of the Secretary of the Interior, dated October 25, 1916, ... has become final. Copies of said decision are herewith inclosed, for your information and for your files, and for service on the State.

The case is hereby closed. So note on your records.

The selection is hereby rejected as to the N½ SE¼, Sec. 19, T. 46 N., R. 98 W.

Copies of decision of February 17, 1917, denying motion for rehearing, are also inclosed.

Respectfully,

CLAY TALLMAN, Commissioner.

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83 Copy

Department of the Interior,

General Land Office.

FSH—"FS" Washington, D. C. Feb. 28, 1917

"B"

C R G O

I hereby certify that the annexed copies of papers, on file with Lander 05521, are true and literal exemplifications from the papers in this office.

In Testimony Whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of the General Land Office.

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84 Plaintiff then made the following offer:

Mr. May: I wish to offer also, the withdrawal order of May 6, 1914, withdrawing the lands in controversy as a part of Petroleum Reserve No. 32.

Judge Lacey: We make no objection as to its form but we do object on the ground that such an order could not affect the vested rights of the State of Wyoming, and we do object to its being admitted in evidence because it is irrelevant here under the issues and under the facts as already shown.

The Court: It is admitted in evidence and you have an exception.

The order was admitted as Plaintiff's Exhibit "B" and is as follows:

Withdrawal of May 6, 1914.

April 30, 1914.

The Honorable,
The Secretary of the Interior.

Sir:

Field investigations by the Geological Survey indicate that the lands in the Bighorn Basin, Wyoming, listed in the accompanying order of withdrawal contain deposits of oil and gas. As these lands are not now withdrawn I recommend the submission to the President of the following order of withdrawal, which involves 88,841 acres.

Respectfully,

GEO. OTIS SMITH, Director.

May 5, 1914.

Respectfully referred to the President with favorable recommendation.

FRANKLIN K. LANE.

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85 Order of Withdrawal.

Petroleum Reserve No. 32, Wyoming No. 8.

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress August 24, 1912 (37 Stat., 497), it is hereby ordered that the following described lands be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and reserved for classification anw in aid of legislation.

Sixth Principal Meridian.

****

T. 46 N., R. 98 W., Sec. 19, NE¼, N½ of NW¼, SE¼ of NW¼, N½ of SE¼, SE¼ of SE¼; (and other lands).

WOODROW WILSON,
President.

6 May 1914.

Plaintiff then made the following offer:

Mr. May: I wish to read into the evidence two general rules and regulations of the Land Office, which I suppose your Honor would notice if called to your attention anyway, but I would rather have them made a part of the record. One of them is Rule Number Seven from the General Land Office, to registers and receivers, dated March 6, 1903, and found in Vol. 32 of the Decisions of the Department of the Interior, relating to public lands, on page 40. I will ask to have that Rule written in as follows: (Reads Rule to Court)

I wish to offer Rule Number Thirteen, in the general circular of the General Land Office, dated January 10, 1906, and found in Vol. 34 of the Decisions of the Interior Department on page 368, and is as follows:

86 Said rules are as follows:

Rule 7. No application which involves the mineral or nonmineral character of land sought to be selected or made the base for such selection, will be received and forwarded by you, until the preliminary requirements, herinbefore indicated, have been complied with. Upon the State conforming to these requirements, you will receive the selection, certify as to the date of filing thereof, and the condition of the

tracts selected or bases used as shown by your records, and forward the same, together with all showing made either for or against the selection, to this office by special letter, without further action upon the selection. The legal fees payable upon selection will not be received until you are advised by this office that the selection may be admitted. In the meantime, you will take no action looking to a disposal of the land.

Rule 13. The local officers are not authorized to accept the relinquishment of any State selection. All relinquishments will be forwarded to the General Land Office through the local office, when, if accepted, the local officers will be directed to cancel the same on their records, and after such cancellation is noted, and not before, the land will be subject to general disposition under the public-land laws.

By Judge Lacey: These rules, and each of them, are objected to as irrelevant and immaterial to any matter here.

By the Court: The objection is overruled and an exception allowed.

By Mr. May: That is all of the evidence that plaintiff has to offer.

The defendants provisionally offered a certified copy of certain matters relating to the selection and relinquishment, subject to checking to see what ones of them were cov-
87 ered by evidence already introduced, offering so much as was not already covered by Defendant's Exhibit "A". This exhibit, being found to be already covered in full, was not made a part of the record. The defendants, including the State of Wyoming, made the following offer:

By Judge Lacey: I offer in evidence the certified copy of a proclamation of the President, constituting the Big Horn Forest Reserve, by which the lands used as a base here were included within the outer boundaries of a forest reserve. This is offered not for any purpose of showing that it would affect our titles to Section Thirty-six, but to show that it was included within the outer boundaries of the reserve. This proclamation is dated February 22, 1897.

This copy of the proclamation of the President was introduced and marked "Defendants' Exhibit 'B' ", and is as follows:

"(The Big Horn Forest Reserve.)

By the President of the United States of America, A Proclamation.

Whereas, it is provided by section twenty-four of the Act of Congress, approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber-culture laws, and for other purposes", "That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the president shall, by public
88 proclamation, declare the establishment of such reservations and the limits thereof";

And whereas, the public lands in the State of Wyoming, within the limits hereinafter described, are in part covered with timber, and it appears that the public good would be promoted by setting apart and reserving said lands as a public reservation;

Now, therefore, I Grover Cleveland, President of the United States, by virtue of the power in me vested by section twenty-four of the aforesaid Act of Congress, do hereby make known and proclaim that there is hereby reserved from entry or settlement and set apart as a Public Reservation all those certain tracts, pieces or parcels of land lying and being situate in the State of Wyoming, and within the boundaries particularly described as follows, to-wit:

Beginning at the southeast corner of Township forty-eight (48) North, Range eighty-four (84) West, Sixth (6th) Principal Meridian, Wyoming; thence northerly along the range line to the north-east corner of said township; thence westerly along the Twelfth (12) Standard Parallel North, to the south-east corner of Township forty-nine (49) North, Range eighty-four (84) West; thence northerly along the range line to the north-east corner of Section thirteen (13), Township fifty (50) North, Range eighty-four (84) West; thence Westerly along the section line to the north-east corner of Section seventeen (17), said township; thence northerly along the section line to the southeast corner of Section twenty-nine (29), Township fifty-one (51) North, Range eighty-four (84) West; thence easterly along the section line to the south-east corner of Section twenty-six (26), said township; thence northerly along the section line to the north-east corner of Section two (2), Township fifty-two (52) North,

Range eighty-four (84) West; thence westerly along the Thirteenth (13th) Standard Parallel North, to the south-east corner of Section thirty-five (35), Township fifty-three (53)
North, Range eighty-four (84) West; thence northerly
89 along the section line to the north-east corner of Section fourteen (14), said township; thence westerly along the section line to the north-east corner of Section fourteen (14), Township fifty-three (53) North, Range eighty-five (85) West; thence northerly along the section line to the north-east corner of Section two (2), said township; thence westerly along the township line to the north-east corner of Section two (2), Township fifty-three (53) North, Range eighty-six (86) West; thence northerly along the section line to the north-east corner of Section two (2), Township fifty-four (54) North, Range eighty-six (86) West; thence westerly along the township line to the south-east corner of Township fifty-five (55) North, Range eighty-seven (87) West; thence northerly along the range line to the north-east corner of said township; thence westerly along the township line to the north-west corner of said township; thence southerly along the range line to the south-west corner of said township; thence westerly along the township line to the north-west corner of Township fifty-four (54) North, Range eighty-eight (88) West; thence northerly along the range line between Ranges eighty-eight (88) and eighty-nine (89) West, to the north-west corner of Township fifty-six (56) North, Range eighty-eight (88) West; thence westerly along the Fourteenth (14th) Standard Parallel North, to the south-west corner of Township fifty-seven (57) North, Range eighty-eight (88) West; thence northerly along the range line between Ranges eighty-eight (88) and eighty-nine (89) West, to the point of intersection with the boundary line between the States of Wyoming and Montana; thence westerly along said State boundary line to the point for the unsurveyed range line between Ranges ninety-two (92) and ninety-three (93) West; thence southerly along said unsurveyed range line to the Fourteenth (14th) Standard Parallel North; thence easterly along said standard parallel to the north-east corner of Township fifty-six (56) North, Range ninety-three
(93) West; thence southerly along the range line be-
90 tween Ranges ninety-two (92) and ninety-three (93) West, to the north-west corner of Township fifty-four (54) North, Range ninety-two (92) West; thence easterly along the township line to the north-east corner of said township; thence southerly along the range line to the south-east corner of said township; thence easterly along the town-

ship line to the North-east corner of Township fifty-three (53) North, Range ninety-one (91) West; thence southerly along the range line to the south-east corner of said township; thence easterly along the Thirteenth (13th) Standard Parallel North, to the north-west corner of Township fifty-two (52) North, Range eighty-eight (88) West; thence southerly along the range line between Range eighty-eight (88) and eighty-nine (89) West, to the south-west corner of Township fifty-one (51) North, Range eighty-eight (88) West; hence, easterly along the township line to the south-east corner of said township; thence southerly along the range line between Ranges eighy-seven (87) and eighty-eight (88) West, to the southwest corner of Township forty-nine (49) North, Range eighty-seven (87) West; thence easterly along the Twelfth (12th) Standard Parallel North, to the north-west corner of Township forty-eight (48) North, Range eighty-seven (87) West; thence southerly along the range line to the south-west corner of said township; thence easterly along the township line between Townships forty-seven (47) and forty-eight (48) North, to the south-east corner of Township forty-eight (48) North, Range eighty-four (84) West, the place of beginning.

Excepting from the force and effect of this proclamation all lands which may have been, prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filings of record has not expired; and all mining claims duly located and held according to the laws of the United States and rules and regulations not in conflict therewith;

91 Provided, that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing, settlement or location was made.

Warning is hereby expressly given to all persons not to enter or make settlement upon the tract of land received by this proclamation

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the City of Washington this 22d day of February, in the year of our Lord one thousand, eight hundred and

ninety- seven and of the Independence of the United States the one hundred and twenty-first.

(Seal)

GROVER CLEVELAND.

By the President:

Richard Olney Secretary of State "

Two witnesses were then produced in behalf of all the defendants, including the State of Wyoming, and gave evidence to the effect that they were cattle men and resided in the immediate vicinity of the lands in controversy, were well acquainted with the lands in controversy on April 4, 1912, and for a number of years prior thereto; that the land was included in land used by them for raising hay and cattle until 1915, and prior to the withdrawal order in 1914 was not known as mineral land so far as they knew. This evidence was introduced over the objection to it by the plaintiff as "incompetent, irrelevant and immaterial, and as a question which if material at all must be passed upon by the land office and not by the court, as to the character of this land, in determining whether or not to approve the selection."

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92 The foregoing was all the evidence given, offered or received at the hearing of this cause.

CHARLES L. RIGDON,
United States Attorney.

CHARLES D. HAMEL,
Special Assistant to United States Attorney.
Solicitors for Plaintiff.

Henry F. May

Special Assistant to the Attorney General,
of Counsel.

H. S. RIDGELEY,
HERBERT V. LACEY,
JOHN W. LACEY,
D. A. PRESTON,
Atty Genl. Wyo.

Solicitors for Defendants including the State of Wyoming.

(Approval of the Statement of the Evidence by the District Judge.)

Approved this 28th day of October, 1918
JOHN A. RINER.

Endorsed: Filed in the District Court on October 28, 1918.

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93 (Decree of the District Court, July 15, 1918.)

In the District Court of the United States for the District of Wyoming.

United States of America, Plaintiff,
No. 963. vs.
H. S. Ridgely, Greybull Refining Company, Midwest Refining Company, and the State of Wyoming, Intervenor, Defendant.

This cause came on to be heard at this term upon the bill of complaint, the joint and several answers of the defendants, H. S. Ridgely and the Midwest Refining Company, the petition of the State of Wyoming to intervene as a defendant, the separate answer of the State of Wyoming to the bill of complaint and the evidence taken on behalf of the plaintiff and defendants at the final hearing, and was argued by counsel:

Thereupon, upon consideration thereof, It is now ordered, adjudged and decreed by the court that the plaintiff's bill of complaint herein be and the same is hereby dismissed. To which order and decree, plaintiff by its counsel excepts.

JOHN A. RINER, Judge.

94 Endorsed: Filed in the District Court on July 15, 1918.

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95 (Petition for Appeal.)

To the Honorable John A. Riner, Judge of the United States District Court for the District of Wyoming:

The above named plaintiff, the United States of America, conceiving itself aggrieved by the decree made and entered in this cause on the 15th day of July, A. D. 1918, dismissing the bill of complaint, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons set forth in the assignment of errors which is filed herewith, and plaintiff prays that its appeal

may be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri.

96 Dated: August 29th, 1918.

CHARLES L. RIGDON,
United States Attorney.

CHARLES D. HAMEL,
Special Assistant to the United States Attorney.
Solicitors for Plaintiff.

Henry F. May,
Special Assistant to the Attorney General.
Of Counsel.

Endorsed: Filed in the District Court on October 28, 1918.

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97 Assignment of Errors.

Now comes the plaintiff in the above entitled cause by Charles L. Rigdon, Esq., United States Attorney for the District of Wyoming, Charles D. Hamel, Esq., Special Assistant to the United States Attorney, and Henry F. May, Esq., Special Assistant to the Attorney General, and say that the decree entered in the above entitled cause on the fifteenth day of July, 1918, is erroneous, unjust and prejudicial to plaintiff in the following particulars:

I.

The Court erred in making and entering the decree dismissing said bill of complaint.

II.

The Court erred in failing and refusing to enter a decree holding the plaintiff to be the absolute owner of the North Half of the Southeast Quarter (N½ SE¼) of Section 19, Township 46 North, Range 98 West, of the Sixth Principal Meridian, and of the product thereof and the proceeds therefrom.

98 III.

The Court erred in failing and refusing to enter a decree holding that the defendants and each of them have no

right, title or interest in or to the lands described in paragraph II hereof, or any part thereof.

IV.

The Court erred in failing and refusing to enter a decree setting aside, answering and holding for naught, in so far as it affects the title to the lands herein involved, the oil and gas lease dated May 24, 1916, by which the State of Wyoming, through its State Board of School Land Commissioners, purported to lease the lands described in paragraph II unto H. S. Ridgely, his successors and assigns, for the purpose of drilling, boring, operating for and producing therefrom, mineral oil and gas.

V.

The Court erred in failing and refusing to enter a decree setting aside, canceling and holding for naught, in so far as it affects the title to the lands herein involved, the assignment dated May 24, 1916, by which the said H. S. Ridgely purported to assign said oil and gas lease to the Greybull Refining Company.

VI.

The Court erred in failing and refusing to enter a decree setting aside, canceling and holding for naught, in so far as it affects the title to the lands herein involved, the assignment dated June 30, 1917, by which the said Greybull Refining Company purported to assign said oil and gas lease to The Midwest Refining Company.

VII.

The Court erred in failing and refusing to enter a decree requiring the defendants and each of them to render a
99 full and true account of all of their operations on and with reference to the lands described in paragraph II hereof, of all the oil and gas extracted therefrom, the date of such extraction, the amount, quantity and value thereof, the amounts used and sold, and the amounts on hand, and that the plaintiff have and receive from the defendants such amounts as may thereupon be found to be due to plaintiff, in kind and in money, as the case may be, together with such damages as the plaintiff may be found to have sustained.

VIII.

The Court erred in failing and refusing to enter a decree enjoining the defendants and their officers, agents, and servants from further trespassing on any of said lands described in paragraph II hereof or from sinking any additional wells

thereon or from extracting oil or gas therefrom, pending the determination of this suit.

IX.

The Court erred in failing and refusing to enter a decree appointing a receiver to take charge of all of said lands described in paragraph II hereof and the product thereof and the proceeds therefrom with authority to conserve and operate the same under the supervision of the Court pending the final determination of this suit.

Wherefore, plaintiff prays that the said decree be reversed; that the said United States Circuit Court of Appeals for the Eighth Circuit cause the proper decree to be entered, whereby the plaintiff shall be decreed to be the absolute owner of the public lands described in paragraph II hereof and of the product thereof and the proceeds therefrom, and that the defendants and each of them be decreed to have no right, title or interest in or to the same or any part thereof, and
100 such other relief given as the plaintiff may be entitled to receive.

Dated: August 29th, 1918.

CHARLES L. RIGDON,
United States Attorney.

CHARLES D. HAMEL,
Special Assistant to the United States Attorney.
Solicitors for Plaintiff.

Henry F. May,
Special Assistant to the Attorney General.
Of Counsel.

Endorsed: Filed in the District Court on October 28, 1918.

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101 Order Allowing Appeal.

On motion of Charles L. Ridgon, Esq., United States Attorney for the District of Wyoming, Charles D. Hamel, Esq., Special Assistant to the United States Attorney, and Henry F. May, Esq., Special Assistant to the Attorney General, and it appearing to the court that the above named plaintiff has heretofore filed herein its petition for the allowance of an appeal, and concurrently therewith its assignment of errors;

It Is Hereby Ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the decree of said court made and entered on the 15th day of July, A. D., 1918, dismissing the bill of complaint herein, be and the same is hereby allowed.

It Is Further Ordered that a transcript of the record, proceedings, papers and exhibits upon which said decree was based, duly authenticated and certified, be forthwith transmitted to said United States Circuit Court of Appeals for the Eighth Circuit.

JOHN A. RINER,
United States District Judge.

102 Endorsed: Filed in the District Court on October 28, 1918.

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103 (Citation and Acknowledgment of Service.)

The United States of America, Plaintiff,
No. 963 vs. In Equity
H. S. Ridgely, Greybull Refining Company, and The Midwest Refining Company, Defendants.

The State of Wyoming, Intervener.

The United States of America—ss.

To H. S. Ridgely, Greybull Refining Company and The Midwest Refining Company, defendants, and The State of Wyoming, Intervener,—Greeting:

You Are Hereby Notified that in a certain case in equity in the United States District Court in and for the District of Wyoming, wherein the United States of America is plaintiff, H. S. Ridgely, Greybull Refining Company and The Midwest Refining Company are defendants, and The State of Wyoming is intervener, an appeal has been allowed the said plaintiff to the United States Circuit Court of Appeals for the Eighth Circuit;

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit in the City of St. Louis, in the State of Missouri, sixty (60) days from and after the date which this citation bears, pursuant to an appeal allowed by the District Court of the United States for the District of Wyoming, wherein the United States is appellant and said H. S. Ridgely, Grey-

bull Refining Company and The Midwest Refining
104 Company and the State of Wyoming are appellees, to show cause, if any there be, why the decree entered by said District Court of the United States on July 15th, 1918, dismissing the bill of complaint in said cause should not be reversed and set aside and why speedy justice should not be done the parties in this behalf.

Witness the Honorable John A. Riner, Judge of the District Court of the United States, for the District of Wyoming, at the City of Cheyenne in said district, this 29 day of October, A. D. 1918.

JOHN A. RINER,
Judge.

Service of the above and foregoing citation is hereby acknowledged by and on behalf of the defendants H. S. Ridgely, Greybull Refining Company, The Midwest Refining Company, and the State of Wyoming.

....., 1918.
10/31/'18 H. S. RIDGELEY, HERBERT V. LACEY, JOHN W. LACEY,
Attorneys for Defendants.

10/29/18 D. A. PRESTON,
Attorney General of the State of Wyoming,
Solicitor for State of Wyoming.

Endorsed: Filed in the District Court on October 29, 1918.

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105 (Praecipe for Transcript.)

To the Clerk of said Court:

You will please prepare and duly authenticate transcript of the entire record in the above entitled cause for an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, excluding the formal and immaterial parts of all exhibits, documents and other papers included therein in accordance with Equity Rule No. 76, to-wit:

1. Bill of Complaint;

2. Subpoenas addressed to defendants H. S. Ridgely, Greybull Refining Company and The Midwest Refining Company, and returns of service;

3. Appearance on behalf of defendant H. S. Ridgely;

4. Appearance on behalf of defendant The Midwest Refining Company;

5. Joint answer of defendant H. S. Ridgely and The Midwest Refining Company, omitting exhibits as they are all contained in the statement of the evidence;

106 6. Petition of State of Wyoming to intervene and order thereon and separate answer of the State of Wyoming, omitting exhibits;

7. Record showing submission of cause to court on final hearing;

8. Statement of evidence to be included in the record on appeal;

9. Final decree;

10. Petition for allowance of appeal;

11. Assignment of errors;

12. Order allowing appeal;

13. The citation issued on such appeal showing service thereof;

14. This praecipe.

Dated: October 28, 1918.

CHARLES L. RIGDON,
United States Attorney.

CHARLES D. HAMEL,
Special Assistant to the United States Attorney.
Solicitors for Plaintiff and Appellant.

Henry F. May,
Special Assistant to the
Attorney General.
Of Counsel.

Due service of a copy of the foregoing praecipe at Cheyenne, Wyo. on this 28th day of October, A. D., 1918, up-

on the defendants and appellees is hereby acknowl-
107 edged, and the ten days allowed appellees within which to file praecipe for additional portions of the record to be incorporated into the transcript is hereby waived.

H. S. RIDGELY,
HERBERT V. LACEY,
JOHN W. LACEY,
Attorneys for Defendants and Appellees.

D. A. PRESTON,
Atty. Genl. State Wyoming.

Endorsed: Filed in the District Court on October 31, 1918.

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108 (Clerk's Certificate to Transcript.)

United States of America,
District of Wyoming—ss.

I, Charles J. Ohnhaus, Clerk of the District Court of the United States for the District of Wyoming, do hereby certify the above and foregoing pages (1) to (....), both inclusive, to be a true, correct and complete transcript and copy of the

Bill of Complaint;

Subpoena in Chancery and returns of service;

Appearance on behalf of defendant H. S. Ridgely;

Appearance on behalf of defendant The Midwest Refining Company;

Joint answer of defendant H. S. Ridgely and The Midwest Refining Company, omitting exhibits;

Petition of State of Wyoming to intervene and order thereon, and separate answer of the State of Wyoming, omitting exhibits;

Record showing submission of cause to court on final hearing;

Statement of evidence;

Final decree;

Petition for allowance of appeal;

Assignment of errors;

Order allowing appeal;

Citation, showing service thereof;

Precipe for transcript,

in case No. 963 Civil, United States of America, Plaintiff, vs. H. S. Ridgely, Greybull Refining Company and The Midwest Refining Company, defendants, lately pending in this court.

Seal
U. S. Dist. Court
Dist. of Wyoming

In Testimony to the above I do hereto sign my name, and affix the seal of said court, at Cheyenne, in said district, this tenth day of December, A. D. 1918.

CHARLES J. OHNHAUS,
Clerk of the District Court of the United States for the District of Wyoming.

Filed Dec. 13, 1918. E. E. Koch, Clerk.

And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(*Appearance of Mr. C. L. Rigdon as Counsel for Appellant.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5334.

UNITED STATES OF AMERICA, Appellant,

vs.

H. S. RIDGELY et al.

The Clerk will enter my appearance as Counsel for the Appellant.

C. L. RIGDON,
U. S. Attorney.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 19, 1918.

(*Appearance of Messrs. Lacey & Lacey as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.

HERBERT V. LACEY,
JOHN W. LACEY,
Cheyenne, Wyoming.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 19, 1918.

(*Appearance of Mr. Henry F. May as Counsel for Appellant.*)

The Clerk will enter my appearance as Counsel for the Appellant.

HENRY F. MAY,
Sp'l Ass't to Att'y Gen'l, 214 Post Office Building, San Francisco.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Mar. 15, 1919.

(*Appearance of Counsel for Amici Curiæ.*)

The Clerk will enter my appearance as Counsel for the Amici Curiæ.

EDWIN A. MESERVE.
SHIRLEY C. WARD.
JEFFERSON P. CHANDLER.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 20, 1919.

(*Appearance of Mr. D. A. Preston as Counsel for Appellees.*)

The Clerk will enter my appearance as Counsel for the Appellees.
D. A. PRESTON.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 20, 1919.

(*Application of Messrs. Meserve, Ward and Chandler for Leave to File Brief as Amici Curiæ.*)

(*Telegram.*)

Los Angeles, Calif.,
Apr. 24, 1919.

Judge Walter H. Sanborn,
United States Circuit Court of Appeals,
St. Paul, Minn.:

Have asked Mr. Thomas F. Fauntleroy of St. Louis by letter to secure permission from your Court for us to file brief as amici curiæ in United States versus Ridgely Number Fifty Three Thirty Four on appeal from District Court of Wyoming on your calendar for hearing at St. Paul May Twentieth involving question as to when title to lieu lands vests in States by selections under section Twenty Two Seventy Five Revised Statutes. Stop. We have not been admitted in your Court but have been in United States Supreme Court and in this Federal Circuit and in Supreme Court of this State. Have sent Mr. Fauntleroy our certificates of admission Supreme Court this State and oath required by your rules. Stop. Mr. Fountleroy wires us no one in St. Louis to act on our request and says he has sent papers to you and suggest- we get in communication with you. Stop. Will not receive our brief from printer until Saturday Twenty Sixth. Would like your order permitting it to be served on counsel, some of whom are in San Francisco and some in Cheyenne not later than May Fifth and filed by that date. Can you have such order entered and your Clerk wire us this permission.

EDWIN A. MESERVE,
SHIRELY C. WARD,
J. P. CHANDLER,
1017 *Union Oil Bldg.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 24, 1919.

(Order Permitting Messrs. Meserve, Ward and Chandler to File and Serve Briefs on or Before May 5, 1919, etc.)

December Term, 1918.

Monday, April 28, 1919.

Upon consideration of the application of Messrs. Meserve, Ward and Chandler, it is hereby ordered that they may file and serve on counsel for the parties in this suit their brief, on or before May 5, 1919, and that their application as amici curiæ to be heard and to have their brief considered by the court is set down for hearing on the day this case is set for hearing on the merits.

April 28, 1919.

(Consent of Appellant That Brief Amici Curiæ Be Considered by the Court.)

It is hereby stipulated that the brief of Messrs. Edwin A. Meserve, Shirley C. Ward and Jefferson P. Chandler, acting as amici curiæ in support of the Appellees' case herein (due service of copy of which brief prior to May 5, 1919, is hereby acknowledged) may be considered by the Court upon the hearing of the appeal herein.

Receipt of copy and acknowledgement of service of Order in the above entitled case, reading as follows, is also hereby admitted prior to May 5, 1919, namely:

"Upon application of Messrs. Meserve, Ward and Chandler,

"It is hereby ordered that they may file and serve on counsel for the parties in this suit, their brief on or before May 5th, 1919, and that their application as amici curiæ to be heard and to have their brief considered by the court, is set down for hearing on the day this case is set for hearing on the merits.

Dated: April 28th, 1919.

(Signed) SANBORN,
Senior Circuit Judge."
HENRY F. MAY,
Special Assistant to the Attorney General.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 6, 1919.

(Stipulation for Consideration by Court of Brief of Amici Curiæ.)

It is hereby stipulated that the brief of Messrs. Edwin A. Meserve, Shirley C. Ward and Jefferson P. Chandler, acting as amici curiæ in support of the Appellees' case herein (due service of copy of which brief prior to May 5, 1919, is hereby acknowledged) may be considered by the Court upon the hearing of the appeal herein.

Receipt of copy and acknowledgement of service of Order in the

above entitled case, reading as follows, is also hereby admitted prior to May 5, 1919, namely:

"Upon application of Messrs. Meserve, Ward and Chandler,

"It is hereby ordered that they may file and serve on counsel for the parties in this suit, their brief on or before May 5th, 1919, and that their application as amici curiæ to be heard and to have their brief considered by the court, is set down for hearing on the day this case is set for hearing on the merits.

Dated: April 28th, 1919.

(Signed) SANBORN,
Senior Circuit Judge."
CHARLES L. RIGDON,
United States Attorney, Solicitor for Appellant.
W. L. WALLS,
Attorney General of Wyoming,
HERBERT V. LACEY,
JOHN W. LACEY,
Solicitors for Appellees.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 8, 1919.

(*Order on Stipulation for Consideration of Brief Amici Curiæ.*)

May Term, 1919.

Tuesday, May 20, 1919.

An order having heretofore been entered in this cause permitting Messrs. Meserve, Ward & Chandler to file and serve their briefs as amici curiæ and, pursuant to written consent of counsel for appellant and stipulation of counsel for all parties filed herein, the Court announced that said briefs filed as amici curiæ will be considered in determining this cause in this Court.

Upon application of counsel for appellant in open Court, leave is granted to file instanter a reply brief to the brief of amici curiæ.

(*Order of Argument.*)

May Term, 1919.

Tuesday, May 20, 1919.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Henry F. May, Special Assistant to the Attorney General, for the appellant, continued by Mr. John W. Lacey for the Appellees and the hour for adjournment having arrived further argument was postponed until tomorrow.

(*Order of Submission.*)

May Term, 1919.

Wednesday, May 21, 1919.

This cause having been called for further hearing, argument was resumed by Mr. John W. Lacey for appellees and concluded by Mr. Henry F. May, Special Assistant to the Attorney General, for the appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

(*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1919.

No. 5334.

UNITED STATES OF AMERICA, Appellant,

vs.

H. S. RIDGELY et al., Appellees.

Appeal from the District Court of the United States for the District of Wyoming.

Mr. Henry F. May, Special Assistant to the Attorney General, (Mr. Charles L. Rigdon, United States Attorney, was with him on the brief), for appellant.

Mr. John W. Lacey, (Mr. D. A. Preston, Mr. William L. Walls, Attorney General of the State of Wyoming, Mr. Herbert V. Lacey, and Mr. Hilliard S. Ridgely, were with him on the brief), for appellees.

Mr. Edwin A. Meserve, Mr. Shirley C. Ward, and Mr. Jefferson Chandler, appeared on brief of amici curiæ in support of appellees' case.

Before Hook and Stone, Circuit Judges, and Amidon, District Judge.

AMIDON, *District Judge*, delivered the opinion of the Court:

The State of Wyoming was admitted by Act of Congress on July 10, 1890, (26 Statutes, 224), which granted to it Sections 16 and 36 for educational purposes, with certain indemnity lands in place thereof in case they had been otherwise disposed of, the indemnity lands to be selected with the approval of the Secretary of the Interior. Under this grant the state acquired a perfect title to a certain

Section 36. On February 22, 1897, the Big Horn National Forest Reserve created by proclamation of the President included within its outer boundaries the section referred to, at a time when title thereto had vested absolutely in the state.

On April 4, 1912, the state filed in the proper local land office its application under the provisions of the Act of Congress of July 10, 1890 (26 Statutes, 222), and Sections 2275 and 2276 of the Revised Statutes, and the acts amendatory thereof, for the tract of land involved in the present suit as indemnity for a part of said Section 36. The state did everything necessary to show a perfect title to the land relinquished and perfect relinquishment thereof to the government and everything that was required either by statute or regulation of the Land Department to select the land here involved as indemnity for the land so relinquished. Among other things in the showing was an affidavit that the land applied for contained no known deposits of mineral or petroleum, and it was stipulated at the hearing that at the time the application was filed the land "had been classified by the government in no way as mineral lands." The filing of the application was allowed by the local land office, publication ordered, the receipt of the publication fee accepted and all the papers submitted by the state were sent to the Commissioner of the General Land Office on April 30, 1912, with a proper certificate of the local officials showing that the records in their office disclosed no adverse claims to the land selected.

On May 6, 1914, the President, under the terms of the Act of June 25, 1910, (36 Statutes, 847), withdrew as oil land the tract so applied for by the state.

On April 29, 1915, the Commissioner of the General Land Office caused notice to be given to the state advising it that inasmuch as the tract applied for had been withdrawn as oil land, certification of the selection, if made, would contain a reservation of the petroleum deposits under the Act of July 17, 1914, (38 Statutes, 510), unless the state within thirty days filed an application for classification of said land as nonmineral, together with a showing, in which event the state would be allowed a hearing to show that the tract was not valuable for petroleum.

On May 24 of the following year, 1916, the state made what purported to be a lease of the property to defendant Ridgley, for the purpose of drilling for oil thereon, which lease was thereafter by mesne conveyance assigned to defendant, Midwest Refining Company.

By letter dated the day following the date of the lease, to-wit, May 25, 1916, the State replied to the notice given under instructions of the Commissioner last above referred to, declining to accept a surface patent so-called, and instead of asking for a hearing as to the character of the land, claimed that an equitable title had vested in it by virtue of its compliance with the laws and regulations in its application for selection of April 4, 1912.

Thereafter on August 17, 1916, the Commissioner of the General Land Office held the selection for cancellation on the grounds that the land had been withdrawn as oil lands and had been shown to be

such. An appeal was taken by the state to the Secretary of the Interior and the decision of the Commissioner was affirmed on October 25, 1916; and this decision was made final by the Secretary of the Interior on February 26, 1917, on petition for rehearing.

Going back now to developments on the land, in the year 1916 drilling for oil was undertaken by the defendant, Midwest Refining Company, and carried on to discovery and subsequent production. But no discovery was made or drilling commenced until after May 24, 1916, the date of the lease to Ridgely, and nearly a year after the letter of July 29, 1915, from the Commissioner to the State of Wyoming notifying it that if the selection were allowed it would contain a reservation of the petroleum deposits. Since that time production has been carried on by defendant, Midwest Refining Company, and is now being carried on by it from a number of wells making a large production. This suit was brought by the United States to enjoin the continuing trespass involved in such drilling and operation and exhaustion of the oil content of the land, to quiet title in the government and to cancel the various instruments relied on by defendants, as supporting their claim of an equitable title thereto, and for an accounting. The state intervened in the action. It and the other defendants filed separate answers. Evidence was adduced showing the facts substantially as above recited. The trial court dismissed the bill upon the merits and the present appeal seeks a review of that decision.

It is stated in the briefs, and was referred to in the oral arguments, that it is the purpose of all parties in this case to present squarely the question whether or not the state can obtain title to lieu lands by filing its application for selection and complying with all the requirements of the statutes, rules and regulations on its part to be complied with, although its selection never was approved, but prior to action thereon by the Commissioner of the General Land Office and while the application for the selected land was pending before him, the land applied for was shown to be oil land and withdrawn as such, and upon those grounds the selection was rejected.

We think that it has been clearly determined by the Supreme Court that the state down to the time of the approval of the application by the Commissioner of the General Land Office acquires no estate, legal or equitable, in the lands applied for as against the government. The only right which it acquires by its application and the proceedings in the local land office is to be protected against any subsequent right in the tract being acquired by private parties in case the government decides to dispose of the lands as agricultural lands.

This in our judgment is placed beyond controversy by the decision of the Supreme Court in Wisconsin Railroad Co. v. Price County, 133 U. S. 496, 511, 512, and more particularly by the decision in Cosmos Company v. Gray Eagle Oil Co., 190 U. S. 301. The latter case is directly in point. There are minor circumstances in which it differs from the present case, but none of these constitutes a substantial ground of distinction.

In brief the Cosmos case holds that the local officials are not vested

with any jurisdiction to pass upon any of the questions, either of law or fact, involved in the application. Their power is confined to accepting the state's papers, making the proper notation upon their records to protect the application against subsequent rights of private parties, and then transmitting the papers with a certificate showing the tract to be free from adverse claims so far as disclosed by the records in their office, to the Commissioner of the General Land Office. That officer is clothed with jurisdiction not only to pass upon the paper showing made by the state but to make any investigation which he sees fit to determine whether the lands are nonmineral so as to come within the statutes controlling the application. Until he approves of the application there is, as Mr. Justice Fields said in the Price County case, 133 U. S. 511, no selection. In other words, the favorable action of the Commissioner is an element of the selection and until that is obtained the state acquires no title, legal or equitable, to the land. In exercising his jurisdiction the Commissioner is not reviewing the action of the local land officials. His jurisdiction is original and primary. While the case is pending before him the transaction is simply an application to exchange. The government is as free in that transaction as the state.

The case of Daniels v. Wagoner, 237 U. S. 547, does not impair the authority of the Cosmos case, but expressly approves it as to the power of the Commissioner to determine the mineral character of the land applied for. All the Daniels case decides in this: That the applicant for lieu lands, by presenting his application to the local land office, acquires the right as against private individuals whose rights in the property arise subsequently, to be protected against such subsequent private rights; and that the Commissioner of the General Land Office in the name of discretion cannot, while holding the lands subject to disposal as agricultural, timber or desert lands, give the land to a private party whose rights arose after the application to select the indemnity lands was made to the local land office. The Daniels case has nothing to do with the right of the government to decide any question of fact involved in the application to select the land as indemnity. It simply holds that a private individual whose rights arise subsequent to the entry of the application in the local land office cannot be given priority over such applicant. The Supreme Court in the case cited simply holds the Commissioner in exercising his jurisdiction to dispose of the lands as between private parties must give effect to the general doctrine of priorities.

In the argument and briefs there is a great array of authorities holding that it is the "known" mineral quality of lands at the time a right to them is acquired which controls in suits to cancel patents, and that the discovery of the mineral character of the land subsequent to the inception of the right does not give the government the right to cancel a patent. The difference between those cases and the present is plain. This is not a suit to cancel a patent or an equitable title. The suit simply involves the question of the right of the government through the Commissioner of the General Land Office to determine whether the lands are of a character subjecting them

to plaintiff's claim. Until that question is decided, as we have already stated, the applicant as against the government acquires no title in the property, legal or equitable. This is not only established by authority but is justified by experience. The right to select indemnity lands in lieu of agricultural lands lost which empowers the selector to range over a whole state in search of lieu lands has been the agency by means of which great frauds have been perpetrated upon the government. What is "known" about lands some years prior to the time when that knowledge becomes determinative of a right is a difficult field of inquiry. The showing at the time of the filing in the local land office is made wholly by the applicant. It is a paper showing. So far as the government is concerned it is an ex parte proceeding. The selector is entitled to agricultural lands and not to mineral lands. The Commissioner of the General Land Office in the exercise of his jurisdiction to determine whether the lands applied for are such as the applicant is entitled to under the law may not only make such inquiry through agents as he sees fit, but if need be, he may make such exploration as is necessary to determine the question upon which he is asked to pass. This is the only way in which the government can be protected against grave frauds in the administration of the public land laws. The power and duty of the Commissioner to determine whether the land is mineral is not dependent on whether some private party has filed a contest. His jurisdiction to protect the United States is certainly as obligatory as to protect the private rights of contestants.

The decree of the District Court is reversed with directions to the trial court to enter a decree in favor of the plaintiff in accordance with the prayer of the bill, and proceed with the cause.

Filed January 6, 1920.

(*Decree.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1919.

Tuesday, January 6, 1920.

No. 5334.

UNITED STATES OF AMERICA, Appellant,

vs.

H. S. RIDGELY, GREYBULL REFINING COMPANY, THE MIDWEST REFINING COMPANY, and the STATE OF WYOMING.

Appeal from the District Court of the United States for the District of Wyoming.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Wyoming, and was argued by counsel,

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause, be, and the same is hereby, reversed without costs to either party in this Court.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to enter a decree in favor of the plaintiff in accordance with the prayer of the bill of complaint, and proceed with the cause.

January 6, 1920.

(*Petition for Appeal from the Circuit Court of Appeals for the Eighth Circuit to the Supreme Court of the United States.*)

THE STATE OF WYOMING, H. S. RIDGELY, and THE MIDWEST REFINING COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

The above mentioned appellants, the State of Wyoming, H. S. Ridgely and The Midwest Refining Company, jointly and severally respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Eighth Circuit and that a decree has therein been rendered heretofore, to-wit, on the 6th day of January, A. D. 1920, reversing the decree of the District Court of the United States for the District of Wyoming; that the matter in controversy in said suit exceeds Five thousand dollars exclusive of interest and costs; that this cause is one prosecuted by the United States of America as plaintiff against these appellants as defendants, having been originally brought by the United States of America in the United States District Court for the District of Wyoming; that the cause arises under the statutes of the United States; that this cause is one in which the United States Circuit Court of Appeals for the Eighth Circuit has not final jurisdiction and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore the said appellants, and each of them, jointly and severally pray that an appeal be allowed them in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herewith filed by the said appellants may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

WILLIAM L. WALLS,
Attorney General of the State of Wyoming.
HERBERT V. LACEY,
JOHN W. LACEY,
Solicitors and of Counsel for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 26, 1920.

(Assignment of Errors on Appeal to Supreme Court U. S.)

THE STATE OF WYOMING, H. S. KINSLEY, and THE MIDWEST REFINING COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

The appellants in the above entitled cause in connection with their petition for appeal herein present and file herewith their assignment of errors as to which matters and things they jointly and severally say that the decree entered herein heretofore, to-wit, on the tenth day of January, A. D. 1920, is erroneous, to-wit:

1. The lands in controversy were lands of equal acreage selected by the State of Wyoming on April 4, 1912, in lieu of lands owned by the State in Section 36, Township 33 North of Range 67 West of the Sixth Principal Meridian in the State of Wyoming.

Said lieu lands were surveyed, agricultural, unreserved public lands of the United States at the time when Wyoming was admitted as a State July 10, 1890, and by such admission became the property of the State of Wyoming for the support of common schools, and so remained to the time of the selection by the State of the lands in controversy.

On February 22, 1897, by proclamation of the President of the United States the lieu lands were included in a forest reservation.

At the time of their selection, the lands in controversy were unappropriated, surveyed, public lands of the United States within the State of Wyoming, which had not been classified as mineral lands, and were not in anywise known to be mineral lands.

The State of Wyoming on April 14, 1913, relinquished to the United States said lieu lands, and in lieu thereof selected the lands in controversy.

In making such relinquishment and selection the State of Wyoming acted in entire good faith and complied with all statutes and rules and regulations of the Land Department then existing.

No discovery of mineral in said lands was made until the year 1916, when oil was discovered therein.

Therefore the United States Circuit Court of Appeals for the Eighth Circuit erred in finding that the lands in controversy are the property of the United States.

2. The United States Circuit Court of Appeals for the Eighth Circuit erred in finding that the lieu lands at the time when they were relinquished by the State of Wyoming were lands that had been "lost" to the State of Wyoming.

3. In construing the expression "not mineral in character" as contained in Section 2275 of the Revised Statutes of the United States providing for the selection of lieu lands, being the statute under which the selection in controversy was made, the Circuit Court of

Appeals for the Eighth Circuit erred in finding that said expression "not mineral in character" refers to the inherent character of the land, and erred in not finding that the said expression refers only to the known character of the land to be selected.

4. The United States Circuit Court of Appeals for the Eighth Circuit erred in fixing the time when the Land Department rendered its decision upon the selection in controversy as the point of time at which the then known conditions of the selected lands determine the mineral or non-mineral character of the lands for purposes affecting the validity of the selection.

5. The United States Circuit Court of Appeals for the Eighth Circuit erred in not fixing the time when the State of Wyoming relinquished the base lands which were relinquished by it and selected the lands in controversy, as the point of time at which the then known existing conditions determine the mineral or non-mineral character of the lands selected for purposes affecting the validity of the selection.

6. Upon the facts as conceded by the parties and shown without conflict in the evidence, and determined by the United States District Court for the District of Wyoming and by the United States Circuit Court of Appeals for the Eighth Circuit, said United States Circuit Court of Appeals for the Eighth Circuit erred in finding that the lands in controversy are the lands of the United States, and erred in failing to find that the said lands are the property of the State of Wyoming, subject to leasehold rights in the other appellants.

7. Upon the facts conceded by the parties, and shown by the evidence without conflict, and found by the United States District Court for the District of Wyoming and by the United States Circuit Court of Appeals for the Eighth Circuit, the said United States Circuit Court of Appeals for the Eighth Circuit erred in failing to find that the rights of the State of Wyoming under its selection attached and took effect at the point of time when the State had done all that was incumbent upon it to do in the premises, and erred in finding that said rights of the State of Wyoming under its said selection were postponed to the time when the facts showing such performance by the State might be ascertained and declared by the land officers.

8. Upon the facts conceded by the parties and shown without conflict by the evidence, and found by the United States District Court for the District of Wyoming and by the United States Circuit Court of Appeals for the Eighth Circuit, said United States Circuit Court of Appeals for the Eighth Circuit erred in finding that the selection of the lands in controversy was subject to approval by the Land Department of the United States or by the Secretary of the Interior in some other sense than that said Land Department and said Secretary of the Interior were vested with the right and duty to determine the facts as they existed at the time of the selection of the lands in controversy by the State of Wyoming, and from said facts, so determined, ascertain and determine the validity of the selection.

9. The United States Circuit Court of Appeals for the Eighth Circuit erred in failing to find that the only power or duty of the Land Department of the United States and of the Secretary of the Interior in relation to the selection of the lands in controversy was to determine the rights of the parties solely upon the facts as they existed at the time of the selection of said lands by the State of Wyoming.

10. The United States Circuit Court of Appeals for the Eighth Circuit erred in failing to find that the only mineral lands excepted as such from the right of the State of Wyoming to select under Section 2276 of the Revised Statutes of the United States were lands then known to be mineral.

11. The United States Circuit Court of Appeals for the Eighth Circuit erred in giving conclusive force and effect to mineral discoveries and developments made subsequent to the selection by the State of Wyoming of the lands in controversy, notwithstanding the fact that said selected lands were not known to be mineral lands at the time of the selection.

12. The United States Circuit Court of Appeals for the Eighth Circuit erred in not affirming the judgment and decree of the United States District Court for the District of Wyoming.

Wherefore, the appellants, and each of them, pray that the said judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit be in all things reversed.

WILLIAM L. WALLS,
Attorney General of the State of Wyoming.
HERBERT V. LACEY,
JOHN W. LACEY,
Solicitors and of Counsel for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 26, 1920.

(*Stipulation as to Amount of Supersedeas Bond on Appeal.*)

THE STATE OF WYOMING, H. S. RIDGELY, and THE MIDWEST REFINING COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

It is hereby agreed and stipulated by and between the United States of America, acting by and through Charles L. Rigdon, United States District Attorney for the District of Wyoming, and David J. Howell, Assistant United States Attorney for the District of Wyoming, solicitors and counsel for the United States of America, and The State of Wyoming, H. S. Ridgely and The Midwest Refining Company, acting by and through William L. Walls, Attorney General of the State of Wyoming, and Herbert V. Lacey and John W.

Lacey, their solicitors and counsel, that the supersedeas bond to be given by the appellants upon the appeal in the above entitled cause from the United States Circuit Court of Appeals for the Eighth Circuit to the Supreme Court of the United States shall be fixed in the sum of Ten thousand Dollars ($10,000.00).

CHARLES L. RIGDON,
United States District Attorney
for the District of Wyoming;
DAVID J. HOWELL,
Assistant United States District Attorney
for the District of Wyoming,
Solicitors and of Counsel for Appellee.
WILLIAM L. WALLS,
Attorney General of the State of Wyoming,
HERBERT V. LACEY,
JOHN W. LACEY,
Solicitors and of Counsel for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 26, 1920.

(Bond on Appeal to Supreme Court U. S.)

THE STATE OF WYOMING, H. S. RIDGELY, and THE MIDWEST REFINING COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

Know All Men by These Presents, that the undersigned United States Fidelity & Guaranty Company, a corporation, organized and existing under and by virtue of the laws of the State of Maryland and authorized to do business as surety and to become surety upon bonds such as this instrument, are held and firmly bound unto United States of America in the sum of Ten thousand Dollars, to be paid to the said United States of America, for the payment of which we bind ourselves, our successors and assigns firmly by these presents.

Witness the seal of said Company and dated this 26th day of Jan'y, A. D. 1920.

Whereas, the appellants in the above entitled cause have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Eighth Circuit heretofore, to-wit, on the sixth day of January, A. D. 1920.

Now, Therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

UNITED STATES FIDELITY &
GUARANTY COMPANY,
By E. R. NIEHAUS,
Attorney in Fact.

The foregoing bond is approved this 26th day of January, A. D. 1920.

WILLIAM C. HOOK,
United States Circuit Judge, Eighth Circuit.

(General Power of Attorney attached to original Bond.)

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 26, 1920.

(*Order Allowing Appeal to Supreme Court U. S. and Fixing Bond.*)

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States be and the same is hereby allowed.

It is further ordered that the bond on said appeal to operate also as a supersedeas be and the same is hereby fixed at the sum of ten thousand dollars, upon the giving of which bond, with the approval of one of the Circuit Judges for the Eighth Circuit, further proceedings in said cause shall be stayed pending the appeal in the Supreme Court of the United States.

Dated this 26th day of January, A. D. 1920.

WILLIAM C. HOOK,
United States Circuit Judge, Eighth Circuit.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 26, 1920.

United States Circuit Court of Appeals, Eighth Circuit.

The United States of America, Eighth Circuit.

THE STATE OF WYOMING, H. S. RIDGELY, and THE MIDWEST REFINING COMPANY, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee.

To United States of America:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, sixty days after the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the State of Wyoming, H. S. Ridgely and The Midwest Re-

fining Company are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable William C. Hook, Judge of the United States Circuit Court of Appeals for the Eighth Circuit this 26th day of January, A. D. 1920.

WILLIAM C. HOOK,
Judge of the United States Circuit Court of Appeals, Eighth Circuit.

Service of the within citation is acknowledged this 29th day of Jan'y, A. D. 1920.

____ ____,
Special Assistant to the Attorney General,
C. L. RIGDON,
United States Attorney for the District of Wyoming, Solicitors and of Counsel for Appellee.

[Endorsed:] No. 5334. United States Circuit Court of Appeals, Eighth Circuit. The State of Wyoming, H. S. Ridgely and The Midwest Refining Company, Appellants, vs. United States of America, Appellee. Citation. Filed Jan. 31, 1920. E. E. Koch, Clerk.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of Wyoming, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the United States of America was Appellant and H. S. Ridgely, et al., were Appellees, No. 5334, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acknowledgment of service endorsed thereon is hereto attached and herewith returned.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth

Circuit, at office in the City of St. Louis, Missouri, this eleventh day of February, A. D. 1920.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 27,497. U. S. Circuit Court Appeals, 8th Circuit. Term No. 742. The State of Wyoming, H. S. Ridgely, and The Midwest Refining Company, appellants, vs. The United States of America. Filed February 24th, 1920. File No. 27,497.